SUPREME COURT OF THE UNITED STATES.

No. 42.

APPEAL.

THE UNITED STATES

AGAINST

ZEPHANIAH KINGSLEY.

LAND CLAIM—16,000 ACRES.

FILED DEC. 18TH, 1837.

FROM THE SUPERIOR COURT FOR EAST FLORIDA.

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Before the honorable Robert Raymond Reid, judge of the superior court, for the district, of East Florida, and specially authorized by law to receive and adjudicate claims and titles to lands in the district of East Florida.

SUPERIOR COURT—EAST FLORIDA.

Be it remembered, that on the 21st day of April, in the year of our Lord one thousand eight hundred and twenty-nine, Zephaniah Kingsley, brought and filed in the clerk's office of the superior court for the district of East Florida, his petition or claim to certain land therein mentioned; which said petition or claim is in the words and figures following, to wit:

PETITION TO THE COURT.

To the honorable Joseph L. Smith, judge of the superior court for the eastern district of Florida.

The petition of Zephaniah Kingsley, respectfully showeth:

That your petitioner claims title to a tract of land, containing sixteen thousand acres, situated on a creek, which empties into the river St. Johns, called McGirt's, and is bounded as follows, to wit: on the south-east and south by lands granted to Ferguson and Doctor's Lake; southwest and west by vacant lands; north by Don Juan McIntosh's land, and east by lands of said Kingsley, and the river St. Johns, as appears by a translation of the said grant hereunto annexed, marked exhibit A, which your petitioner prays may be taken as a part of this his petition; which said tract of land was granted to your petitioner by the Spanish Government of East Florida, under the administration of Governor Coppinger, on the twentieth day of November, in the year of our Lord, one thousand eight hundred and sixteen.

And your petitioner further showeth, that in virtue of said grant, your petitioner, soon after the date of the same, entered upon and took possession of the land granted in the situation mentioned in said grant, and was preparing to build thereon a water saw-mill, agreeably to the condition of the said grant, but was deterred therefrom, by the disturbed state of that part of the province of East Florida, and occupancy of the said land, by some of the tribes of Florida Indians, who were then wandering in all directions over the country.

And your petitioner further showeth, that his claim to said land was submitted to the examination of the board of commissioners, appointed under, and virtue of, an act of Congress of the U. States, entitled "An act amending and supplementary to an act for ascertaining claims and titles to lands in the Territory of Florida, and to provide for the survey and disposal of the public lands in Florida," passed the third day of March, in the year of our Lord, one thousand eight hundred and twenty-three, and has by said commissioners been reported on unfavorably; but your petitioner is advised that the report of the said commissioners is contrary to law, justice, and the evidence produced in the case.

And your petitioner further showeth, that the said tract of land is situated as aforesaid, within the district of East Florida, and within the jurisdiction of this honorable court, is embraced by the treaty between Spain and the United States, of the twenty-second of February, in the year of our Lord one thousand eight hundred and nineteen; that his claim to said land has not been decided or finally settled, under the provisions of the act of Congress of the United States, entitled "An act, supplementary to the several acts providing for the settlement and confirmation of private land claims in Florida," passed the twenty-third day of May, in the year of our Lord, one thousand eight hundred and twenty-eight, or of any of the acts to which the said last recited act is supplementary; that the tract of land so claimed by your petitioner, contains a greater quantity of land that the commissioners, appointed under the said act of Congress, were authorized to decide, and above the quantity confirmed by the aforementioned act of Congress, passed the twenty-third day of May, one thousand eight hundred and twenty-eight; that the said claim of your petitioner to the said land hath not been reported by the said commissioners, appointed under any of the aforesaid acts of Congress,or any other, or by the register and receiver, acting as such, under the several acts of Congress, in such case made and provided, as antidated or forged; and that the said claim hath not been annulled by the aforesaid treaty between Spain and the United States, nor by the decree ratifying the same.

Wherefore, your petitioner prays that the validity of his claim to said land may be inquired into, and decided upon by this honorable court, and that in pursuance of an act of Congress, for that purpose made and provided, the United States be made a party to this petition, and that process in this behalf do forthwith issue against Thomas Douglass, Esquire, the attorney of the United States for this district, according to the provisions of the said act of Congress above alluded to.

And your petitioner will ever pray, &c.

Z. KINGSLEY.

Exhibit A.

Annexed to the foregoing petition, being certified translation of the memorial of Zephaniah Kingsley, and the grant of the Governor thereon, made from a copy of the original, certified by Antonio Alvarez, keeper of the public archives of East Florida; and offered and received in evidence in this cause at the hearing thereof.

EXHIBIT A. MEMORIAL OF AND GRANT TO KINGSLEY.

[*Translation.*]

His Excellency the Governor:

Don Zephaniah Kingsley, an inhabitant of this province, with due respect appears before your excellency, and says: that wishing to erect a water saw-mill in that creek, of the river St. Johns, called McGirt's, on a vacant place, and it being necessary for that purpose to secure a quantity of timber sufficient to supply said mill and establishment, he supplicates your excellency be pleased to favor him with your superior permission, to build the same in the place aforesaid, with its area of five miles square of land, or the equivalent thereof, for its continued supply of timber: bounded southeast and south by lands granted to Ferguson and Doctor's Lake; southwest and west by vacant lands, north by Don Juan McIntosh's land, and east by lands of said Kingsley, and the river St. John ; which favor he hopes to receive from the goodness of your excellency. Fernandina 20th, November 1816.

Z. KINGSLEY.

St. Augustine, 2*d December*, 1816.

Decree.—Considering the advantage and utility which is to accrue to the province, if that is effected which Don Zephaniah Kingsley proposes to do, it is hereby granted to him, that, without prejudice of a third party, he may build a water saw-mill in that creek, of the river St. John, called McGirt's, under the precise condition however, that until he builds said mill, this grant will be considered null and void, and when the event takes place; then, in order that he may not suffer by the expensive preparations he is making, he will have the faculty of using the pines comprehended within the square of five miles, which he solicits for the supply of said saw-mill, and no other person will have a right to take any thing from it. Let the corresponding certificate be issued to him from the secretary's office.

COPPINGER.

A copy of the foregoing petition and exhibit, with a citation thereto annexed, was delivered to the marshal of this district, to serve on the attorney of the United States for the same district; and the return of the said marshal thereon, is in the words and figures following, to wit: "Executed by serving a copy on Thomas Douglas, Esq. United States Attorney, the 25th April, 1829."

"WATERS SMITH,
Marshal."

And afterwards, to wit, on the 7th day of May, in the year of our Lord one thousand eight hundred and twenty-nine, Thomas Douglas Esq. United States attorney for the district of East Florida, brought and filed in the clerk's office aforesaid, his answer to the said petition, which is in the words and figures following, to wit:

ANSWER OF UNITED STATES ATTORNEY.

SUPERIOR COURT.—*May Term, in the year* 1829.

THE UNITED STATES OF AMERICA
ads.
ZEPHANIAH KINGSLEY.

The answer of Thomas Douglas United States attorney, for the district of East Florida, to the petition or bill of complaint of Zephaniah Kingsley: The said attorney in the name, and for and on behalf of the same United States, saving and reserving to them now, and at all times hereafter, all and all manner of benefit of exception to the manifold errors, defects and irregularities in the said petition or bill of complaint contained, for answer thereunto, or unto so much thereof as it is material and necessary for them to answer unto, answereth and saith: That he has no knowledge of any such grant of lands having been made by the Spanish Government of East Florida, under the administration of Governor Coppinger, to the said Zephaniah Kingsley, on the twentieth day of November, in the year of our Lord one thousand eight hundred and sixteen, (or at any other time) as is alleged, set forth and described by the said Zephaniah Kingsley, in his said petition or bill of complaint; nor has he any knowledge of the said Zephaniah Kingsley's ever having been in possession of the said lands, or of his ever having prepared to build a water saw-mill thereon, as he in his said petition, or bill of complaint aforesaid, has alleged, and cannot therefore either admit or deny the same; but respectfully prays this honorable court to require of the said Zephaniah Kingsley, due proof of the making and execution of said supposed grant, and of all the matters and things in his said petition, or bill of complaint thereof alleged, and set forth as they are therein stated; and also of all the matters and things in the said petition, or bill of complaint alleged, of the said possession of said lands, by said Zephaniah Kingsly, and of his having prepared to build a water saw-mill thereon, as they are therein stated, and set forth, according to law, and the usages of courts of equity.

And this respondent admits that the said Zephaniah Kingsley, submitted his claim to the said land, to the board of commissioners in his said petition or bill of complaint mentioned, and that said board of commissioners rejected the same; but this respondent denies that the report of said commissioners, in said petition or bill of complaint mentioned in relation to said land, is contrary to law, justice and evidence produced in said case; or that the said Zephaniah Kingsley, was prevented from building said water saw-mill, on the said land, by any such cause as he, in his said petition, or bill of complaint has assigned and alleged.

And this respondent farther saith, that if any such grant was made by the said Spanish Government of East Florida, under the administration of Governor Coppinger, to the said Zephaniah Kingsley, for sixteen thousand acres of land, as is alleged, set forth, and described in the said petition, or bill of complaint, (which is by no means admitted) it was made contrary to, and in violation of the laws, ordinances, and royal regulations of the Government of Spain, which were then in force in East Florida, providing for the granting of lands in its provinces, and without any authority on the part of the said Governor Coppinger, to make it; and farther, that no power had been conferred upon the said Government of East Florida, under the administration of said Governor Coppinger, to make grants of land in East Elorida of the magnitude of the one claimed and described in the petition, or bill of complaint aforesaid; and that it was never approved by the King of Spain; and that it was, and is wholly null and void.

And this respondent farther saith, that if any such grant was made as aforesaid, by the said Spanish Government of East Florida under the administration of the said Governor Coppinger, to the said Zephaniah Kingsley, which is not admitted; it was made upon the precise and express condition, that until he the said Zephaniah Kingsley built the said mill, the said supposed grant was to be considered null and void; and this respondent farther avers, that the said Zephaniah Kingsley, has always hitherto wholly and entirely failed to build the said water saw-mill, and that he still fails and neglects so to do; and that if said supposed grant, had been made by competent authority, and the said water saw-mill had been built according to the condition thereof, it would not have vested in the said Zephaniah Kingsley any other right to the said land than that of using the timber within a square of five miles for the supply of his said mill. And this respondent farther saith, that if the aforesaid grant itself was made, as is alleged, and the said Spanish Government of East Florida, under the administration of Governor Coppinger, had been invested by the Government of Spain with competent powers to make it, the express condition aforesaid, upon which it was made, was the act of a sovereign, and that it was not a matter for judicial inquiry, whether any circumstances had occurred to excuse a compliance with that condition; but that it was competent only for the sovereign, who had imposed the said condition to release it, or to excuse a non compliance with it; and now to the sovereign power alone of the said United States, who have taken under the treaty in the said petition, or bill of complaint mentioned, the place of Spain, does the authority rest to decide whether any circumstances have occurred to excuse a compliance with that condition, or to release it.

And this respondent farther saith, that at the time, when it is alleged, that the said supposed grant was made as aforesaid; it was, and for a long space of time had been, the fixed and settled policy of the Spanish Government to parcel out is colonial domain, with reference to the sole objects of increasing the population of its provinces, and of benefitting its indigent subjects; and that according to that policy, grants for the purpose of speculation were never tolerated; and that the said supposed grant was obtained, (if obtained at all) for purposes of speculation only.

And now, having fully answered all the matters and things in the said petition, or bill of complaint aforesaid, alleged, the said attorney prays that the said United States may be hereof discharged; and that their reasonable costs and charges by them, in and about the defence of this suit paid, laid out, and expended, may be adjudged and decreed to them.

THOS. DOUGLAS,
United States Attorney, &c.

And afterwards, to wit, on the third day of August, in the year of our Lord, one thousand eight hundred and thirty, the said Thomas Douglas, United States attorney as aforesaid, brought and filed in the clerk's office aforesaid, his amendment to the foregoing answer; which said amendment is in the words and figures following, to wit:

AMENDMENT TO ANSWER OF UNITED STATES ATTORNEY.

THE UNITED STATES
ads.
ZEPHANIAH KINGSLEY.
} Claim for 16,000 acres of Land

And the said respondent further saith, that Don Ruperto Saavedra, "senor auditor of war" of the province aforesaid, having been required by Don Jose Coppinger, Governor, &c. as aforesaid, to report to the said Governor, upon various matters relative to grants and concessions of land, before that time made in said province, and amongst other things, upon the rights of those persons to whom grants and concessions of land had been made, upon condition of their establishimg mechanical works, (to wit, factories, saw-mills, &c.) on the 27th day of October, in the year 1818, made his official report thereon, the 8th article of which is in substance as follows, to wit: "Assignments of large portions of territory, which have been made for the establishment of factories, to persons who did not then comply, nor have since presented themselves, to establish their mechanical works, ought to be considered without any right or value, and said lands declared perfectly free, that they may revert to the class of public lands; in this particular, also, the conditions for which they have been granted should be referred to, and in case any of them should have no limits, an equitable time be specified for the establishment of the works, which being passed without carrying them into effect,they be declared vacant." And this respondent saith, that the said Don Jose Coppinger, Governor, &c. as aforesaid, adopted and confirmed said report, and decreed thereon in substance as follows, that is to say: "I conform to the foregoing opinion, and let it be complied with: assigned the term of six months counted from this date, (the 27th day of October, in the year 1818,) for the establishment of the mechanical works referred to in the eighth article, on the terms expressed therein;" which said decree was made and signed by the said Governor Coppinger, at St. Augustine, in said province, on the 29th day of the same month of October, in the said year 1818, all of which will more fully appear by reference to said report and decree, as published in White's Compilation, at pages 250 to 253, which this respondent also prays leave to introduce and read on the hearing of this cause. And this respondent saith, that the said Zephaniah Kingsley did nor build or establish the said water saw-mill, within the aforesaid term of six months, but wholly failed and neglected so to do; and that whatever right or claim the said Zephaniah Kingsley may have had in and to the said tract of land, under the pretended grant or concession aforesaid, was entirely annulled and taken away by virtue of said decree, and that the said lands became, and were, perfectly free, and reverted to the class of public lands at the expiration of the aforesaid term of six months.

And this respondent further saith, that the said Ruperto Saavedra, "senor auditor of war," as aforesaid, in another official report made by him upon the same subjects to the said Governor Coppinger, on the 18th day of January, in the year 1819, amongst other things, says, in substance as follows, to wit: Although no royal order, nor the regulations, speaks of the concessions of lands for the establishment of mechanical works, it is very obvious that it being the will of his majesty to improve the province which he has taken so much interest in, dispensing, for the purpose, copious favors; the Governors had the privilege of granting lands for the establishment of said works, with the same inducement of proprietorship to all those who contributed by their expenditures to works of so much utility to the improvement of industry. Nevertheless, it is certain that many individuals, who have obtained such concessions, have remained in inaction, without having for so long a period advanced the establishment of said works, it appears just that such concessions which have remained in inactivity, should be declared null and of no effect; but not so against those who have advanced the establishment of their works; since, by their industry and expenditures, they have made themselves entitled to every protection, to animate their perseverance." And this respondent farther saith, that on the same day and year last aforesaid, at St. Augustine aforesaid, the said Don Jose Coppinger, Governor, &c. as aforesaid, adopted and confirmed the report last aforesaid, and decreed thereon in substance and effect as follows, that is to say, "I confirm the foregoing opinion and let it be complied with;" all of which will more fully appear by reference to the report and decree last aforesaid, as published in the compilation aforesaid, at pages 256 and 257. And this respondent saith, that at the date last aforesaid, the said Zephaniah Kingsley had not, (nor has he since,) established or advanced in any manner the building of the said mill, but then had, (and ever since has,) wholly failed and neglected so to do; and that the said supposed grant or concession of the said tract of land, (if it was not already completely null and void,) was entirely annulled and set aside by the decree last aforesaid.

THOS. DOUGLAS,
United States Attorney.

And on the thirteenth day of August, in the year of our Lord, one thousand eight hundred and twenty-nine, the said claimant brought and filed in the clerk's office, aforesaid, his replication, which is in the words and figures following, to wit:

REPLICATION.

SUPERIOR COURT—*East Florida.*

ZEPHANIAH KINGSLEY,
vs.
THE UNITED STATES.

The replication of Zephaniah Kingsley to the answer of Thomas Douglas, Esq. attorney of the United States defendant.

And this replicant, saving and reserving to himself all, and all manner of advantage of exception, which may be had and taken to the manifold errors, uncertainties, and insufficiencies in the answer of the said defendant, for replication thereunto says, that he does and will aver, maintain, and prove his said bill to be true, certain, and sufficient in the law, to be answered unto by the said defendant; and that the answer thereto is very uncertain, evasive, and insufficient in the law, to be replied unto by this replicant without that, that any other matter or thing in the said answer contained, material or effectual in the law to be replied unto, confessed or avoided, traversed or denied, is true, all which matters and things this replicant is ready to aver, maintain and prove, as this honorable court shall order and direct, and humbly prays, as in and by his said bill he hath already prayed.

ZEPHANIAH KINGSLEY.

And afterwards, before the superior court for the district of East Florida, holden at the court house, in the city of St. Augustine, at the term of November, in the year of our Lord one thousand eight hundred and thirty-two, to which term this cause had come by regular continuance, to wit, on Saturday, the twenty-fourth day of said term, and the first day of December, the following entry of record was made in this cause, to wit:

LEAVE TO AMEND PETITION.

ZEPHANIAH KINGSLEY
vs.
THE UNITED STATES OF AMERICA.
Land Olaim. 16,000 acres.

On motion of the agent for said claimant, leave is given him to amend his petition filed herein.

And afterwards, on the sixth day of July, in the year of our Lord one thousand eight hundred and thirty-three, the said claimant brought and filed in the clerk's office aforesaid, his amendment to the said petition; which is in the words and figures following, to wit:

AMENDMENT TO PETITION.

Superior Court, *East Florida.*

Zephaniah Kingsley }
vs. } Land Claim. 16,000 acres.
The United States, }

The petition filed herein is amended by leave of the court, by adding thereto the following sentences, which are to be included therein, and made a part thereof:

And your petitioner further showeth unto your honor, that, upon the disturbed and dangerous state and condition of this province, west of the St. Johns river, (and which continued in such state from the year 1812 till the exchange of flags,) being fully made known to Don Jose Coppinger, as Governor of the then Spanish province of East Florida, by the grantees of mill grants, and of the impossibility of complying with the conditions of said grants, by reason of said disturbed state of the country, the said Governor Coppinger by a verbal order or decree, made known, that in consequence of the continued unsettled and disturbed state of the province, and of the impossibility of the grantees of mill grants complying with the conditions of the same with safety to themselves or their property; that the grantees should not, by a failure to erect their mills, thereby forfeit their title; but that the same should remain valid, and be exonerated from the compliance of the condition therein named, till the state of the country should be such as that the grantees could, with safety, erect their works.

And your petitioner further showeth unto your honor, that the province west of the St. Johns, at the place where the tract of land claimed by your petitioner is situated, and at every place west of the St. Johns, continued in such disturbed and dangerous state, from the date of your petitioner's grant, and for a long time previous, till the transfer of the province from Spain to the United States; and that your petitioner could not, with any safety to himself, or his property, have erected said mill, west of the St. Johns, between the time of the date of his grant and the transfer of the province as aforesaid; all which matters and things your petitioner will show and prove unto your honor, on the hearing of this cause; and your petitioner further alleges, that since the transfer of the province your petitioner has been deterred from erecting said mill, agreeably to the conditions of his said grant, in consequence of the uncertainty in which titles to land have been involved in this province; and was deterred from erecting said mill, previous to the transfer of said province, for the reasons above stated, and for those on which the aforesaid verbal order or decree of Governor Coppinger was founded.

ZEPH. KINGSLEY,
By his Attorney in fact.
K. B. GIBBS.

And afterwards, to wit, on the eigth day of July, in the year of our Lord one thousand eight hundred and thirty-three, Thos. Douglas, United States attorney for the district of East Florida, brought and filed in the clerk's office aforesaid, his answer to the foregoing amendment; which said answer is in the words and figures following, to wit:

ANSWER TO AMENDMENT.

SUPERIOR COURT, *District of East Florida.*

THE UNITED STATES
ads. } Land Claim. 16,000 acres.
ZEPHANIAH KINGSLEY,

The answer of Thomas Douglas, United States attorney for the district aforesaid, to the amendment of the petition or bill of complaint of the said Zephaniah Kingsley.

The said attorney for, and on behalf of the same United States, as to the matters and things in the said amendment alleged, contained, and set forth, answers and says: That, whether the said province was in a disturbed and dangerous state and condition, west of the St. Johns river, from the year 1812 till the exchange of flags, this respondent does not know, and cannot, therefore, either admit or deny the same, but requires due proof thereof. But, this respondent saith, and so he expressly allegeth, that it appears by the complainant's own showing, that if it were so, the said disturbance and danger was as great at the time when the said pretended grant or concession was made, and when the said complainant accepted the same, and took upon himself the performance of the condition therein contained, as it has been at any time since. And this respondent denies, that the said Don Jose Coppinger, as Governor of said province of East Florida, did, in consequence of said disturbed and dangerous state and condition of the said province west of the St. Johns river, and of the impossibility of complying (by the grantees of mill grants) with the conditions, with safety to themselves or their proparty, or for any other cause, by a verbal (or any other) order or decree, whatever, make known that the grantees should not, by a failure to erect their mills, thereby forfeit their title, or that the same should remain valid, and the said grantees be exonerated from the performance of conditions therein named, till the state of the country should be such as that the grantees could, with safety, erect their works.

And this respondent also denies, that if the said Governor Coppinger had made any such verbal order or decree, it would have had any force, effect, or binding operation whatever; and this respondent avers and insists, that whatever might have been the state of said province, before said change of flags, that ever since that event, which took place on the tenth day of July, 1821, that portion of the province in which the said tract of 16,1000 acres of land is situated, has been perfectly quiet, and neither disturbed nor dangerous; and that the said complainant might, at any time since the said transfer, have safely complied with the condition of the said grant; and this respondent fully believes, (although he is not certain of the fact) that he might, with perfect safety, have done so before that time; and this respondent denies, that the uncertainty in which titles to land have been involved in this province since the said transfer, ought to have deterred him from erecting the said mill, or that any such uncertainty existed, or if it did, that it affords him, the said complainant, any excuse for his laches in not building the said mill.

And this respondent further saith, that the said complainant hath not, by his said amendment to his said petition or bill of complaint, shown the time when, or the place where, the said verbal order or decree was made, (if, indeed, any such verbal order or decree ever was made, which is not admitted,) and that this respondent will insist upon that uncertainty and defect in the allegation of said complainant at the hearing of this cause.

THOS. DOUGLAS,
United States Attorney.

And afterwards, before the superior court for the district of East Florida, holden at the court house, in the city of St. Augustine, at the term of July, in the year of our Lord one thousand eight hundred and thirty-four, to which term this cause had come by regular continuance, to wit, on Monday, the 14th day of said term, and the eleventh day of August, the following entry of record was made in this cause, to wit:

HEARING OF CAUSE.

ZEPHANIAH KINGSLEY,
against
THE UNITED STATES OF AMERICA.
} Land Claim. 16,000 acres.

This day came, as well the counsel for the said claimant, as the counsel for the said United States, and this cause came on to be heard this day; and the petition of the said claimant with the amendment thereto, and the answer of the attorney of the United States with the amendments thereto, together with all the replication of the said claimant, were read to the court. The counsel for the claimant offered and read in evidence, without objection, a certified copy of the original grant or concession in this case, together with a certified translation of the same. The claimant's counsel also read in evidence without objection, the depositions of Geo. I. F. Clarke, Antonio Alvarez, Bernardo Segin, Jos. S. Sanchez, and John M. Fontane, taken in this case. The claimants counsel also offered in evidence in this case all the testimony of Joseph S. Sanchez, Philip Solano, and Raphael D. Fontane, taken in the case of Elizabeth Wiggins against the United States, on the part of the claimant, relating to the disturbed state of the country, under the agreement of counsel, filed in said case of Eli-Wiggins; and the counsel for the United States offered in evidence in this case, all the testimony of said witnesses, taken in the said case of Elizabeth Wiggins, on the part of the United States, relating to the same subject, under said agreement. The counsel for the United States also offered in evidence in this case, the deposition of Antonio Alvarez, as taken in the case of John Breward vs. The United States, the same being so copied as to be made applicable to this case; and and a document in the case of Juan Russel, dated Havana, 4th March, 1815.

And the evidence and testimony in this case on both sides, being now concluded, and argument of counsel having been heard, as well on the part of said claimant as on that of the United States, this claim was submitted to the court for its decree therein.

Evidence and testimony offered and read in this cause at the hearing thereof, to wit:

[No. 1.]

COMMISSION TO EXAMINE CLARKE, SEGIN, ALVAREZ, SANCHEZ AND FONTANE.

Offered and read by Claimant.

Territory of Florida:

In the name, and by the authority, of the United States of America.

To John C. Cleland Esquire a justice of the peace for St. Johns county, in said Territory:

Whereas, a certain cause is now depending in the superior court for the eastern district of Florida, in which said cause Zephaniah Kingsley is claimant, and the United States of America defendant; and it being necessary to the investigation of said cause, to have the testimony of George I. F. Clarke, Bernardo Segin, Antonio Alvarez, Joseph S. Sanchez, and John M. Fontane, you have been named by the said claimant and the said defendant, as commissioner to examine said witnesses on certain interrogatories.

Know ye, that confiding in your prudence, ability, and integrity, you are by these presents appointed, and full power and authority are hereby given to you, diligently to examine the aforesaid witnesses upon certain interrogatories to be exhibited to you, as well on the part of the said plaintiff, as on the part of the said defendant, or of either party in said cause; and, therefore, you are hereby authorized and requested, on a certain day, or on certain days, and at a certain place, or at certain places, to be appointed by you for that purpose, to cause the said witnesses to come before you, and then and there to examine each of them apart on the said interrogatories, on their respective corporal oaths, or on their respective solemn affirmations, first taken before you, and to take such their examinations and reduce them to writing on paper, and when you shall have so taken them, to sign the same with your name, and enclose and seal the whole together, conformably to the instructions hereunto subjoined.

And you are hereby further requested, that before you act in or be present at the swearing or solemn affirming and the examining of any of the said witnesses, you do severally make oath, or solemn affirmation, that, according to the best of your knowledge, you will truly, faithfully, and without partiality to any or either of the parties in said cause, take the examination and depositions of every witness produced and examined by virtue of this commission upon the interrogatories hereunto annexed and produced to you; and that you will not publish or make known to any person whomsoever, except the clerk or clerks who may by you be employed and sworn to secrecy in the execution of this commission, the contents of any of the depositions of the witnesses to be taken by you in this commission named, until publication shall pass by rule or order of the said superior court. And you are hereby further authorized and requested, to administer an oath or solemn affirmation of secrecy to any clerk or clerks whom you may employ to take or transcribe the deposition of any of the witnesses so examined, by virtue of these presents, before such clerk or clerks shall be permitted to act in, or be present at, such examination.

Witness, the honorable Robert R. Reid, judge of the superior court for the eastern district of Florida, this 14th day of July, in the year one thousand eight hundred and thirty-four, and in the LIX year of the independence of the United States of America.

[SEAL.] K. B. GIBBS, *Clerk.*

INSTRUCTIONS.

When the testimony is taken, the commissioner is required to sign his name at the bottom of each sheet of the depositions, and of the whole, after fixing and sealing the several sheets together; then to enclose the whole examination, commission and all, in an envelope, sealed up, and his name written on the outside across the seals, and to endorse the packet on the corner thereof with the names of the parties, and to direct the same to K. B. Gibbs, Esq. C. S. C. E. D. F. at St. Augustine; and deliver it to him.

INTERROGTORIES TO CLARKE, SEGIN, ALVARÉZ, SANCHEZ, AND FONTANE.

SUPERIOR COURT, *District of East Florida.*

ZEPHANIAH KINGSLEY,
vs. } Land Claim. 16,000 acres.
THE UNITED STAES.

Interrogaties to be propounded to George I. F. Clarke, Bernado Segin, Antonio Alvarez, Joseph S. Sanchez, and John M. Fontane, witnesses, to be produced, sworn and examined on the part of the claimant in the above entitled cause, before John C. Cleland, Esquire, a justice of the peace, for St. Johns county, under a commission hereto annexed.

First interrogatary. Are you not a native of East Florida, and for how many years has it been your place of residence?

Second. What was the state of East Florida: disturbed or not, in that portion of it on the west side of St. Johns river, about McGirt's creek, and Doctor's Lake ; and was or was not that portion of East Florida in so disturbed and dangerous a state and condition from the year 1817, till its transfer to the United States, as that a saw-mill could not have been erected or a settlement made on the west of the St. Johns at the place, mentioned in this interrogatory, with safety to either property or persons :

Third. Was or was not this country more disturbed, and particularly that part of it west of the St. Johns and about Doctor's Lake, after the year 1817, than before that period ?

Fourth. Were or were not the Indians by the invasion of this province by Gen. Jackson, in 1818, on the west, driven in large numbers into East Florida, and was not that a reason why the country west of the St. Johns, was rendered more disturbed after that period than before ?

Fifth. Do you or not know that an overseer was killed on Drayton Island by the Indians, even since the transfer of this country to the United States?

Sixth. If you know any other matter or thing which may be material to the claimant on the trial of this cause, please state the same as fully and particularly, as if specially interrogated thereto.

Additional interrogatory to George I. F. Clark. Were you or not surveyor general of the Spanish Government, at the transfer of this country to the United States, and for many years previous thereto, and in virtue of such office, were not your means of your acquiring information as to the state of the country, generally, very ample.

Z. KINGSLEY,
By his Attorney in fact,
K. B. GIBBS.

Cross interrogatories to be propounded to said witnesses.

First. If you answer that the country west of the St Johns was so much disturbed as to render it unsafe to make settlements therein from the latter part of the year 1816, to the change of flags in 1821, please to state whether or not such disturbances was produced by hostile indians or by white men ? If by Indians, state whether or not the country bordering on the St. Johns river, and below the mouth of Black creek, and the white inhabitants residing there were disturbed by hostile incursions of the Indians during those years? If by white men, state by whom they were led or commanded, and whether or not the said white men disturbed the persons or destroyed the property of the white inhabitants residing in said district of country during the period before mentioned? If you answer that the settlers and their property in said district, was unsafe during said period, by incursions of bands of white men, state at what time they ceased to molest the said inhabitants and their property ?

Second. State whether McGirt's creek, spoken of in the direct interrogatories, is above or below Black creek on the St. John's river : If below, how far?

Third. If you answer that the district of country above spoken of was disturbed and unsafe during the period before mentioned, state whether or not the said district has not been quiet and entirely safe, since the exchange of flags in 1821?

Fourth. State where Drayton Island, (spoken of in the fifth interrogatory,) is situated, and whether it is above or below the mouth of Black creek: If above, state how far?

The defendant objects to the inquiry contained in the fifth interrogatory, as to the fact whether or not an overseer was murdered or killed by the Indians, since the exchange of flags on Drayton Island.

R. C. ALLEN,
For the United States.

ANSWERS OF CLARKE.

SUPERIOR COURT, *District of East Florida:*

ZEPHANIAH KINGSLEY,
vs.
THE UNITED STATES.
} Land Claim. 16,000 acres.

The answers to the interrogatories propounded to George I. F. Clarke, a witness examined in the above cause on behalf of the claimant and defendant; the said George I. F. Clarke, being first duly sworn.

To the first interrogatory, witness answers: Yes; I am a native, and have resided in East Florida all my life.

Second interrogatory, witness answers: The insurrection commenced in 1812: threw the whole province into a general ferment, and the destruction of the Indian settlements in Alachua, in 1813, by an American army, and these followed up by the destruction of the Micasuky and Sawanee Indian towns, by an American army in 1818, with the intermediate scuffling and fighting between the Indians and the white plundering parties about their cattle, kept most part of the province in a very uninviting, and, many parts, dangerous state to all efforts of industry, and the whole western side of St. Johns river, from its proximity to suchs cenes, the most effected by these evils.

Third interrogatory. Witness answers: I cannot say that the parts mentioned was in a worse state after the year 1817, than before, but there was none of that safety which invites industry.

Fourth interrogatory. Witness answers: The destruction of the Indian towns of Micasuky and Sawanee by General Jackson's army in 1818, did drive the Indians in numerous and scattered parties down through the eastern and southern part of this province to the general danger of the whole.

Fifth interrogatory. Witness answers: I do not recollect to have heard of this occurrence.

Sixth interrogatory. Witness answers: I was one of a party exploring St. Johns river at the time when General Jackson's army was destroying the Micasuky and Sawanee towns, in the spring of 1818, and we had to retreat to St. Augustine, from the dangers manifest around us.

To the whole of the additional interrogatory, witness answers: Yes.

CROSS INTERROGATORIES.

To the first cross interrogatory, witness answers: The disturbances kept up in and about Alachua, and the influence of which extended down to those parts of the St. Johns mentioned, arose principally from an extensive course of plunder carried on for some years between some of the white inhabitants of Florida, and many more of those of Georgia, on the immense gangs of cattle owned by the Indians, and left there when they abandoned Alachua, and made their settlements at Sawanee; many partial and bloody scenes occurred amongst them, and cattle were reduced in price on the Georgia side of St. Mary's river, to three dollars a head and less. These evils by the joint efforts of the authorities of Georgia and Florida, were put a stop to in 1817, but that did not eradicate the danger, or at least the fear that continued to prevail in all parts remote from, or thinly settled by the white inhabitants of Florida. In all new thinly settled and settling countries, there will be found a hardy few in the advance, as though they courted or enjoyed danger as an amusement; but this carries no inducement or shelter to the more reflecting parts of the community.

Second cross interrogatory. Witness answers: McGirt's creek is below Black creek, about 18 miles.

Third cross interrogatory. Witness answers: My total retirement from all those parts since the change of flags in 1821, prevented my knowing or heeding any thing about them; prior to that, I was officially present.

Fourth cross interrogatary. Witness answers: Drayton's Island is in Lake George, about forty-five miles a direct course, or sixty miles following the meandering of the river above Black creek.

GEO. I. F. CLARKE.

Sworn before me, and subscribed to, this 21st day of July, A. D. 1834.

JOHN. C. CLELAND,
Justice of the Peace and Commissioner.

ANSWERS OF SEGIN.

SUPERIOR COURT, *District of East Florida.*

ZEPHANIAH KINGSLEY,
vs.
THE UNITED STATES.
} Land Claim. 16,000 acres.

Answers to the interrogatories propounded to Bernardo Segin, a witness examined on the part of the claimant and defendant in the above cause; the said Bernado Segin, being first duly sworn.

To the first interrogatory, witness answers: I am a native of East Florida, and it has been my residence from my birth.

Second interrogatory. Witness answers: I know that the inhabitants on the river St. Johns were in a disturbed state in the year 1817, and before the transfer of East Florida to the United States, in consequence of the revolution by McGregor's party, that came into Florida, (East) at this time, and continued in this disturbed state until the cession. I believe that no saw-mill or any other buildings or improvements could be erected during the continuance of McGregor's invasion, with any degree of safety to the proprietors.

Third interrogatory. Witness answers: The same as the second interrogary.

Fourth interrogatory. Witness answers: I understood that numbers of Indians were driven from the west into East Florida during the invasion of General Jackson. I suppose it would be a reason why the country west of the St. Johns river was rendered in a disturbed state.

Fifth interrogatory. Witness answers: I know nothing of it.

Sixth interrogatory. Witness answers: I know nothing more than what has been stated in my foregoing answer that would benefit the parties in this cause.

CROSS INTERROGATORIES.

To the first cross interrogatory, witness answers: The west side of the river St. Johns was in a disturbed state by the Indians being driven to the east by General Jackson; and also the white men under the command of McGregor, the Spanish inhabitants having no protection, and, consequently, were kept in a continued state of alarm: not aware that the persons or property of any individual was destroyed by the disturbances of either the whites or Indians. The white men under the command of McGregor ceased to alarm the inhabitants of East Florida as soon as the United States troops took possession of Fernandina.

Second cross interrogatory. Witness answers: Does not know of such a place.

Third cross interrogatory. Witness answers: Yes.

Fourth cross interrogatory. Witness answers: Does not know where Drayton Island is situated.

B. SEGIN.

Sworn to, and subscribed before me, this 21st day of July, A. D. 1834.

JNO. C. CLELAND,
Justice of the Peace and Commissioner.

ANSWERS OF ALVAREZ.

SUPERIOR COURT, *District of East Florida.*

ZEPHANIAH KINGSLEY,
vs.
THE UNITED STATES.
} Land Claim. 16,000 acres.

The answers to the interrogatories propounded to Antonia Alvarez, a witness examined in the above cause, on behalf of the claimant and defendant; the said Antonio Alvarez being first duly sworn.

To the first interrogatory, witness answers: I am a native of East Florida, and it has always been my residence.

Second interrogatory. Witness answers: The country of East Florida was in a disturbed state, from the year 1812 until the year 1815, or 1816, particularly the part mentioned; that in the year 1817 it was again disturbed by the expedition under McGregor, in consequence of which the troops stationed at St. Nicholas garrison, on the St. Johns river, was withdrwn by the Spanish Government, and that part of the country left without any protection. Knows it would not be safe, nor could not have been safe in 1817, to establish a saw-mill, or make any improvements, with safety to the proprietors.

Third interrogatory. Witness answers: I know that after the year 1817 the Indians murdered several persons on the other side of the St. Johns river, but does not recollect distinctly the names of the persons, or the year in which said families were so murdered; that in consequence thereof, some of the inhabitants took refuge on this side of the river.

Fourth interrogatory. Witness answers: There were many Indians about this period came into East Florida. Does not recollect of any other disturbance that took place by the Indians except that which is stated in the 3d interrogatory.

Fifth interrogatory. Witness answers: I think I did hear something of a person being murdered on Drayton island.

Sixth interrogatory. Witness answers: I know nothing more than what has been stated.

CROSS INTERROGATORIES.

To the first cross interrogatory, witness answers: The country was disturbed in June, 1817, by McGregor's party, as stated in my answer to the 2d interrogatory, and after that period the Indians committed the depredations alluded to in my answer to the 3d interrogatory. The white men were commanded by McGregor, and during the time his troops had possession of Ferdandina; believes it was not safe for the Spanish inhabitants to form any establishments on the other side of the river St. Johns; does not recollect at what time the Indians that committed their depredations aforesaid, ceased their invasion; does not know the location of Black creek, or that district of country.

Second cross interrogatory. Witness answers: I do not know the location of Black and McGirt's creeks, as I have never been in that part of the country.

Third cross interrogatory. Witness answers: Yes; it has been quiet.

Fourth cross interrogatory. Witness answers: I know that Drayton island is situated on Lake George.

ANTONIO ALVAREZ.

Sworn to, and subscribed before me, this 21st day July, A. D. 1834.

JOHN C. CLELAND,
Justice of the Peace and Commissioner.

ANSWERS OF SANCHEZ.

SUPERIOR COURT, *District of East Florida.*

ZEPHANIAH KINGSLEY *vs.* THE UNITED STATES.	Land Claim. 16,000 acres.

Answers to the interrogatories propounded to Joseph S. Sanchez, a witness examined on the part of the claimant and defendant in the above cause; the said Joseph S. Sanchez being first duly sworn.

To the first interrogatory, witness answers: I am a native of East Florida, and have always resided in it.

Second interrogatory. Witness answers: I do not know the location of McGirt's creek, or Doctor's Lake; believe that the country west of the St. Johns river was so disturbed from the revolution of 1812 and '13, up to the change of flags, as to render unsafe all description of property and persons.

Third interrogatory. Witness answers: I do not know whether the west of the river St. Johns was more disturbed after 1817 than it had been previous to it, nor do I know whether the country about Doctor's Lake was more particularly disturbed or not, nor do I know the location of Doctor's Lake.

Fourth interrogatory. Witness answers: The invasion of the Territory of Florida by General Jackson, drove the Indians in large numbers into East Florida; supposes that to be one of the reasons why the whole country was more disturbed at that time than at any other.

Fifth interrogatory. Witness answers: I do not recollect that any person was killed on Drayton island, as I do not know where Drayton island is situated; but I do know that several persons were killed on the west bank of the river St. Johns; I do not recollect whether the killing took place before or after the transfer of Florida to the United States,

Sixth interrogatory. Witness answers: I do not recollect of any other matter or thing that would be material or beneficial to either party in this cause.

CROSS INTERROGATORIES.

To the first cross interrogatory, witness answers: The whole country west of the St. Johns river was disturbed alternately by Indians and white men; cannot recollect the particular period of time when those disturbances took place. I do not recollect by whom the white men were commanded, believe that had no regular commander; they continued to disturb the country and property until the exchange of flags.

Second cross interrogatory. Witness answers: I do not know where McGirt's creek is situated, whether it is above or below Black creek, having travelled but seldom into the country during the reign of the

Spanish Government; and since then, have had no object in making myself aquainted with the geography of the country.

Third cross interrogatory. Witness answers: No; there has been several persons killed by he Indians on the west side of the St. Johns river since the exchange of flags.

Fourth cross interrogatory. Witness answers: I have already stated that I do not know where Drayton island is situated, I believe it to be somewhere in the river St. Johns.

JOS. S. SANCHEZ.

Sworn to, and subscribed before me, this 21st day of July, A. D. 1834.

JOHN C. CLELAND,
Justice of the Peace and Commissioner.

ANSWERS OF J. M. FONTANE.

SUPERIOR COURT, *District of East Florida.*

ZEPHANIAH KINGSLEY
vs.
THE UNITED STATES.
Land Claim. 16,000 acres.

The answers to the interrogatories propounded to John M. Fontane, a witness examined in the above cause on behalf of the claimant and defendant; the said John M. Fontane, being first duly sworn.

To the first interrogatory, witness answers: I am and have resided in it during my life, with the exception of such times as I was absent.

Second interrogatory. Witness answers: During the period mentioned in this interrogatory, I did not think it safe to make a settlement on the west side of the river St. Johns.

Third interrogatory. Witness answers: I do not know that the parts mentioned in this interrogatory were more disturbed, or not after the year 1817, than for a few years previously.

Fourth interrogatory. Witness answers: I understood that General Jackson pursued a great many Indians into Plorida in 1818, but I do not know whether the Indians were more troublesome after this time, as the country was disturbed some years previous by Indians and white men.

Fifth interrogatory. Witness answers: I think I have heard of it.

Sixth interrogatory. Witness answers: The whole country of East Florida was more or less in an unsettled state from 1812 until the exchange of flags.

CROSS INTERROGATORIES.

To the first cross interrogatory, witness answers: The disturbances were generally by Indians, and sometimes by white men between the years 1816 and '21. The Indians attack one or two families residing on Black creek, and two or three persons were killed; this was the common report at the time. I do not know who was the leader of such white men, or whether they ever destroyed any property in that neighborhood; after the exchange of flags the country became more tranquil.

Second cross interrogatory. Witness answers: McGirt's creek is on the west side of the river St. Johns, 5 or 6 miles or thereabouts above Jacksonville.

Third cross interrogatory. Witness answers: Yes, the country has been tranquil.

Fourth cross interrogatory. Witness answers: Drayton Island, I believe, is high up the river St. Johns, near Lake George.

JOHN M. FONTANE.

Sworn before me, and subscribed to, this 22d day of July, A. D. 1834.

JOHN C. CLELAND,
Justice of the peace and Commissioner.

[No. 2.]

Testimony taken on the part of the claimant, offered and read by claimant. Testimony taken on the part of the United States, offered and read by the attorney of the United States.

SUPERIOR COURT, *East Florida—July Term,* 1834.

ZEPHANIAH KINGSLEY,
vs.
THE UNITED STATES.
} Land Claim. 16,000 acres.

Testimony of Joseph S. Sanchez, Philip Solano, and Raphael D. Fontane, taken in open court in the case of Elizabeth Wiggins against the United States, relating to the disturbed state of the country, and read in evidence in this case at the hearing thereof, to wit:

TESTIMONY OF JOS. S. SANCHEZ—of Joseph S. Sanchez.

Examined by Counsel for Claimant.

Question. Do you know where Lake George is situated?

Answer. I have never been there, I believe it is situated south and west of this place. I cannot say how far distant it is from this place. I do not know where it is; it is on the river St. Johns somewhere.

Question. Are you not able to state that it is up the river St. Johns, and a considerable distance south of Pelaska, and that it is in the neighborhood of Spring Garden?

Answer. I have heard that it is up the river St. Johns, south of Pelaska. I do not know how far it is from Pelaska. I have never been in that section of the country.

Question. Will you not be pleased to state whether it is not south of the junction of the Ocklewaha with the St. Johns?

Answer. I cant say.

Question. Are you able or not to state whether or not it was considered unsafe to settle in that portion of this province, and around and contiguous to Lake George, in the years 1815 and 1816, and from that time till the transfer of the province to the United States?

Answer. Yes; it was generally believed unsafe to travel anywhere south and west of this place, before and even since the transfer of the country. I believe that there were one or more prosecutions for murders committed sometime after the change of flags by the Indians.

Question. Had not the attack of Gen. Jackson on the Indians in 1817 or 1818, the effect of driving them in large bodies from the Alachua country towards the eastern part of the province, and especially to the banks of the river St. Johns?

Answer. Yes; they were driven as far even as St. Augustine.

Question. Was it or not the common report and understanding of the people of this part of the province that, from about the year 1816, to the time of the cession, the shores and neighborhood of Lake George were the places of especial and common resort by the Indians?

Answer. I don't know that it was more a place of resort than any other, even north of this place. I heard of the Indians committing several murders about Flemmings island, or in that vicinity somewhere.

Question. From what did the unsafe condition of this province result in Spanish times?

Answer. It resulted from the frequent incursion of the people from the borders of Georgia, together with those of this side, and the unsettled state of the Indians who were never controlled by the Spanish Government at all, and who were always ranging through the province.

Question. Would negro property, particularly on small plantations and settlements on the river St. Johns, and especially high up the river, have been safe within the periods you have spoken of?

Answer. They were not considered safe. I know of several cases where they were kidnapped by the persons I have mentioned in my preceding answer.

Examined by the U. States Attorneys.—Question. You have said it was dangerous to travel to the south and west of this before the delivery of the province to the United States. Were there no persons settled in the country to the south and west of this previous to that time?

Answer. There were two or three persons settled about Musquito: but they were obliged to pay pretty dearly for it. They had to give the Indians presents every time they came down there, to keep them quiet.

Question. How long had those persons been settled there, and how long, before the change of flags, had there been any molestation of those persons by the Indians?

Answer. There were never more than four or five persons settled at Musquito: I don't know how long they were settled there. The old ones died off, and others took their places; and they were obliged to pass as Englishmen, to be allowed to stay down there by the Indians, who saved them the trouble of reaping all their crops, by stealing their corn and provisions.

Question. Were you at Musquito within the time you mention, or how do you know that the Indians committed the depredations you have stated?

Answer. I don't exactly recollect the first time I went down to that section of the country. I was down there once, when a party of Indians came to the house of Mr. Hunter, and they seemed to think that every thing belonged to them. Even now the Indians are sometimes in the habit of stealing provisions.

Question. Is it not the character of the Indians to plunder the plantations, whenever they have an opportunity?

Answer. I believe that it is their general character; but they were in the habit of doing it more frequently in this section of the country, because the inhabitants and Spanish Government were not strong enough to keep them in subjection.

Question. You have said there were not settlers on the river St. Johns; to what part of the river do you intend to apply the remark?

Answer. On the river south and west of Musquito: I meant to apply the remark to the river generally, on the east side from its head down to the neighborhood of Picolata.

Question. What number of persons were there settled at Picolata?

Answer. I believe there were no other persons living at Picolata, but Mr. Wanton and family, and Mr. Rondon and his family. I believe there no inhabitants then on that side of the river, till you got down to Judge Fatio's, and down to Julington creek, where there were a good many inhabitants settled.

Question. Do you recollect to have heard of any disturbance among these inhabitants occasioned by the Indians, after the revolution of 1812 to 1813?

Answer. Yes; the Indians were always troubling them, and they are doing so now; killing their stock in the neighborhood of Picolata.

Question. Was there any other disturbance among them, other than that you have mentioned?

Answer. I can't say, I have no recollection.

Question. Do you know of a single instance under the Spanish Government, of a white person having attempted to make a settlement on Lake George?

Answer. I can't say that I ever heard.

Question. Do you recollect to have heard of any person going direct to Lake George, during the time the Spaniards remained in this country?

Answer. I don't know that I ever heard of any person going direct to Lake George; there were a few persons, not more than four or five, that were in the habit of travelling that country, trading with the Indians.

Question. Was not the whole country, in the neighborhood of Lake George, an uninhabited wilderness, during the whole period of the Spanish occupancy of this province?

Answer. I expect it was; no one would have gone there to settle, for they did not consider it safe to go there.

Question. At what time did the last revolution of the province terminate; and was not the country as tranquil from that time, as it was at any other period, until the delivery of the province to the United States?

Answer. The revolution I believe terminated the latter end of 1812 or in 1813; I do not recollect the time exactly. The country was never more untranquil than it was from that time till the exchange of flags. The country was more untranquil from that time, till the exchange of flags, than at any other time, by the incursions of these people he has mentioned from Georgia.

Question. Were the persons you have mentioned from Georgia, troublesome to the Indians or to the Spaniards?

Auswer. They were troublesome to both; they plundered and murdered the white population as well as the Indians.

Question. Was the disturbance greater after the year 1815 than it had been before that time?

Answer. I think that it was; after the revoltion the country continued very disturbed till the change of flags ;I think it became more tranquil about a year before the change of flags, but not so tranquil as to induce persons to settle, till a few years after the change of flags.

Question. Did any person, without your knowledge, attempt to make a settlement at a distant and remote place, during the period from 1812 till 1821?

Answer. Yes; I think there were one or two attempts made to settle part of the country: Arredondo attempted to settle the Alachua grant, and Joseph M. Sanchez attempted to settle at Dunn's Lake; there may be others that I know nothing about.

Question. Did these persons make their settlements?

Answer. I think Joseph M. Sanchez did not succeed; I believe the Arredondos were four or five years in making a settlement; they had to make negotiations with the Indians.

Question. What attempt did Mr. Sanchez make to settle at Dunn's Lake?

Answer. I believe he went out there and took some negroes with him, but he was obliged to come back: I think this was just before, or immediately after the change of flags. He did not abandon the land; he afterwards went there and settled the place, and lived there five or six years till he was taken sick, when he came to town and died.

Question. At what time did Mr. Sanchez make his settlement on Dunn's Lake?

Answer. I think the time when he first went out to Dunn's Lake, was in 1817 or 1818; and the last time when he went out to settle, and did effect a settlement, was after the change of flags; how long after, I do not recollect.

Examined by Claimant.—Question. You said in answer to an inquiry from the counsel for the United States; that there were no settlements except of Indians on the river St. Johns; especially to the east side of it above Picolata. Will you state the distance and direction of Picolata from St. Augustine?

Answer. It is directly west, about eighteen miles distant.

Question. Was not the province, and the Indians in it, particularly disturbed after 1815 by the invasion of the province on the west, by General Jackson, and at St. Mary's, by General Gaines?

Answer. It was disturbed by the invasion of General Jackson, who drove the Indians down upon us, and they stole our property and every thing else. I don't know how much the invasion of General Gaines troubled the country.

Question. Were not the Indians, by the force and fear of General Jackson, subsequent to 1815, driven in great numbers into and over East Florida from the west of the Sawanee?

Answer. Yes; they were so, and even to St. Augustine?

Question. Were not the plantations at the south and west of St. Augustine, so far as any were established after 1815, to the transfer, constantly liable to have their negroes kidnapped by the patriots from Georgia and the St. Mary's?

Answer. There were some instances where they were taken and, I believe, one or two instances where they were shot.

Question. Could not a person to whom a concession had been made, according to the practice and usage of the Spanish Government, enter upon the performance of the condition of possession and cultivation at any period after the concession, provided the Government had not previously granted the land to another?

Answer. I believe they could, that is, if they had been disturbed at any time from going on the land, and if the Governor had not granted the land to another person.

Question. Suppose a concession made upon head rights, could not the grantee enter upon the land for the purpose of cultivating it at any time while it remained ungranted to another?

Answer. I don't know, it depended upon the will of the Governor; sometimes he directed that the party should take possession within a limited time, at other times he did not limit the time at all.

Examined by United States Attorney.—Question. Were the Indians driven into the province by the invasion of General Jackson on the west until the month of May, 1818?

Answer. I don't recollect exactly the time, it was sometime in 1818.

The counsel for the United States objected to all the testimony of this witness, in relation to the disturbed state of the country, as being irrelevant; which objection was overruled by the court, and the testimony admitted.

TESTIMONY OF R. D. FONTANE.—Of Raphael D. Fontane.

Raphael D. Fontane, sworn as a witness in open court, on behalf of the claimant.

Question. Are you a native inhabitant of East Florida; and has the city of St. Augustine been your constant residence?

Answer. Yes.

Question. Will you state where Lake George is situated, and its distance and direction from St. Augustine?

Answer. It is situated on the river St. Johns, in about a southwest direction from here, and is about sixty miles distant from here by land, and between 45 and 50 miles above Picolata; and from Musquito, across to Lake George, is between 25 and 30 miles.

Question. Will you state whether the country at Lake George, and in its neighborhood, was considered a safe place for settlement at any time between 1815 and the transfer of the province?

Answer. I don't think it was.

Question. Was it reported as a place of frequent and common resort of the Indians of the province?

Answer. Yes.

Question. Do you consider that either slaves or other property would have been at all safe at a small settlement on the shores of the lake, at any time from 1815 to the transfer?

Answer. I don't think they were.

Question. Was slave property considered liable to be kidnapped when upon the St. John's, to the south and west of St. Augustine; and were negroes occasionally kidnapped and run into Georgia or into the Indian country?

Answer. They were.

Question. Do you know of any disturbances that occurred in the country, occasioned either by the Indians or by the patriots, subsequent to 1815? and if so, please to state what they were.

Answer. I do. In 1817 Amelia Island was taken. In 1818, at McGirt's point, there was the family of one Bradley killed there by the Indians, and some of them wounded. In 1817, at Black creek, there was a son of one Mr. Branning killed by the Indians at Flemming's island. A party of Indians, about the latter part of 1817, came down there and killed a young man. At Picolata, there were some negroes taken away that belonged to Mr. Wanton. I think this was in 1816; they were taken by white men, and I believe they were carried into Georgia. There were a family of free negroes taken within nine miles of this city; they were taken near about the time that Wanton's were. There were a boat, in the month of August, 1817, left Amelia Island and went to Musquito, and went up the Tomoka river, for the purpose of plundering; there was a party fitted out from that place, and I believe all the men were killed in the boat but one; and their boat was taken. I was engaged in two expeditons, in 1817, to go out and protect the inhabitants. It was understood there was a boat fitting out for the purpose of plundering the inhabitants, and we went to Mrs. Hudnell's, on the St. Johns river. I was in another expedition that went to St. Mary's river to protect the inhabitants. One of these expeditions was in July, 1817, and the other expedition was sometime after that, in the same year.

Examined by United States Attorneys.—Question. Do you recollect of any other disturbances in the province, between the years 1815 and the year 1821, than those you have mentioned?

Answer. I have no recollection of any others.

Question. How far is Amelia island from Lake George. How far is McGirt's point, Black creek, and Fleming's island, from Lake George?

Answer. I should suppose Amelia island to be about one hundred and fifty miles from Lake George. McGirt's point, about one hundred miles. Black creek, about eighty miles. Flemming's island, about eighty miles, and Picolata, about fifty or sixty miles distant from Lake George.

Question. How many persons were supposed to be concerned in the taking of negroes of Mr. Wanton at Picolata; how many negroes were taken, and were they not the children of Mr. Wanton?

Answer. I suppose there were eight or ten persons concerned. I believe, including Wanton's children, there were about 17 negroes taken, as near as I can recollect.

Question. Was not Wanton an Indian countryman, and were not the persons engaged in taking these negroes, subjects of the King of Spain?

Answer. I don't know that he was. I have known him to live at Picolata. I believe that some of these persons engaged in taking these negroes of Wanton's, were Spanish subjects, and some of them people from the borders of Georgia. There was a gang of Indians at McGirts point; I dont know of how many it consisted. The Governor did not send out troops at that time. There were eleven Indians concerned in the affair on Flemming's island. I don't know how many Indians there were concerned in the affair at Black Creek.

Witness states: That the strength of the Spanish garrison in this place, from the year 1815 till the change of flags, including the black troops, were something like six hundred men, well armed and equipped. There was a garrison on the St. Johns, at a place now occupied by Mrs. Hudnell, called Fort St. Nicholas, but which was broken up in June, 1817. There was a garrison at Pilaska, opposite the place where Dr. Brush's settlement now is. There was a fort at Picolata; but I don't know that there was any troops there; there were a few men at the place where Mr. Hollingsworth formerly lived, about 12 miles above St. Nicholas. Witness does not know that there were any troops at the mouth of the St. Johns river after 1812. Witness states that the number he has mentioned, as being stationed at this place, does not include the militia of this place, which might have been one hundred. Witness states that the boat that was taken at Musquito, was taken by the militia that went from this place. The Governor received intelligence of this boat's fitting out, and the boat was seen to pass here, and the militia arrived about the same time with the boat; the whole of the men in the boat were killed, with the exception of one man, and the boat taken.

Question. Whenever the Governor was applied to for protection by any of the people settled in the country, did he not send out detachments of troops for their relief?

Answer. I don't recollect of any instance of the kind. Companies that were fitted out, I know to have been volunteer companies fitted out by permission of the Governor.

Question. Could a settlement have been made upon Lake George, with safety to persons or property, before the year 1815?

Answer. I think not. I have been at Lake George; I was up there in the early part of 1817; I was not there with the Indian traders; I was looking out for live oak.

Examined by Claimant.—Question. Were these garrisons stationed in different places on the St. Johns, or elsewhere, considered as protecting the country, and making it safe and secure beyond the reach of their guns?

Answer. They were not. I believe they were merely kept there for the purpose of giving information to the Governor if there was any disturbance. There were only a few men.

Question. Was the garrison, opposite Pilaska, commanded by Lalderal?

Answer. It was kept by a few free negroes; there was a corporal there; I believe Lalderal was stationed there. The object of this garrison was to conduct Indians across the river St. Johns.

Examined by United States Attorney.—Witness answers: That it is between 25 and 30 miles from Lake George to Pilaska.

The counsel for the United States objected to all the testimony of this witness, in relation to the disturbed state of the country, as being irrevelant; which objection was over-ruled by the court, and the testimony admitted.

TESTIMONY OF P. SOLANO.—Of Philip Solano.

Philip Solano, sworn as a witness in open court, on behalf of the claimants.

Question. Are you a native born inhabitant of East Florida?

Answer. Yes.

Question. Have you been a constant resident of the province?

Answer. Yes.

Question. Be pleased to state your age.

Answer. I am fifty-one years old.

Question. Were you in Spanish times engaged in licensed trade with the Indians of the province? and if so, for what period.

Answer. Yes. We traded with the Indians when we pleased;

we had no limited time. I was in trade with them for about twenty years before the cession.

Question. Do you know where Lake George is situated?

Answer. Yes. It is situated on the river St. Johns, about sixty or seventy miles southwest of this place.

Question. Will you he pleased to state, as near as you can, how far Lake George is above Picolata?

Answer. I declare I cannot say. I have never been there by water, but it may be in a straight line about sixty miles. The river is very crooked.

Question. Are you able to state, whether or not, it was considered unsafe to settle in that portion of the province, and around and contiguous to Lake George, in the year 1815 and 1816, and from that time to the transfer of the province to the United States?

Answer. Yes.

Question. Were not the Indians, by the force and fear of General Jackson, subsequent to 1815 and at the time he invaded West Florida, driven in great numbers into, and over, East Florida, from the west of Sawanee?

Answer. They were so.

Question. Will you be pleased to state, if you know, whether or not Lake George and its neighborhood was or was not a place of frequent and common resort of the Indians?

Answer. Yes; it was a common resort of the Indians, more so in the winter; they resided there more in the winter than at any other time.

Question. Will you state, whether at the time the Indians were driven in from the west by General Jackson, they did not particularly resort to, and in great numbers harbor, about Lake George?

Answer. Yes; a grest many.

Question. Will you be pleased to state, whether negroes or other property, upon the river St. Johns, and to the south and west of St. Augustine, from 1815 to the transfer of the province, was considered safe?

Answer. No.

Question. Do you consider that a small settlement could have been made and occupied with safety on the banks of Lake George, or its neighborhood, for any considerable time during any period between the years 1815 and the time of the cession?

Answer. I don't believe it could be done.

Question. Do you know of any particular incursion upon the province or disturbance between the years 1815 and the cession? If you do, be pleased to state them, and the time they occurred.

Answer. I do not recollect.

Question. Were not some of McGregor's men killed at Musquito?

Answer. Yes; some of them were killed there, that came there in a boat, I understood.

Question. Where did these men of McGregor's go from, and for what purpose did they go to Musquito?

Answer. I can't exactly say. I heard they went from St. Mary's.

Question. Did or did not East Florida remain in a very unsafe and unsettled state for some years after the cession?

Answer. Yes.

Question. Was negro property safe or unsafe on the St. Johns river, particularly high up the river, between 1818 and the cession?

Answer. I never considered them safe.

Question. Was or was not a great number of negroes kidnapped and carried off from the St. Johns between 1815 and the cession?

Answer. I don't recollect of any, in particular, being taken away. Some ran away.

Examined by United States Attorneys.—Question. You have said you have been frequently at Lake George. Will you state, if you please, what you suppose to be the extent of the lake in width and breadth; and whether or not it is not a very extensive sheet of water?

Answer. I have never been for the purpose of examining the place. I don't know the length or the width of it. I have seen the lake often, but I don't know how long or how wide it is.

Question. Do you think it is ten miles in breadth?

Answer. I cannot say whether it is ten miles in width or not: it may be between five and ten miles wide. I don't know exactly how wide it is.

Question. Do you think it ten or fifteen or twenty miles long?

Answer. I could not say exactly, it may be ten miles long.

Question. Have you travelled much on the borders of the lake?

Answer. I have been to it different times, but I have never travelled much on the borders of the lake.

Question. Did you ever know any other white persons, except Indian traders, to go out to Lake George before the change of flags?

Answer. No.

Question. Was it not very unusual for even the Indian traders to go to Lake George before the change of flags?

Answer. It was not in their way; it was unusal for them to go there.

Question. How far is the settlement on Musquito from Lake George?

Answer. I can't say exactly, but I suppose it to be about 25 or 40 miles.

Question. Was there any settlements between Musquito and Lake George?

Answer. Yes; there was one at Spring Garden.

Question. Who made the settlement at Spring Garden; and at what time was it made. How long did he live there, and at what time was it abandoned?

Answer. One Mr. Williams made the settlement. The time when it was made is about thirty years ago, as near as I can recollect. I don't know how long he lived there, or when it was abandoned.

Question. Was any one living at Spring Garden in the year 1815?

Answer. I believe not. I saw Indians living about there in 1815.

Question. Was there any other settlements nearer to Lake George than the settlement at Musquito in the year 1815.

Answer. Not that I know of.

Question. What number of men were in the boat at Musquito, in the year 1817, when you say some men were killed; and did not the balance of the party belonging to the boat leave there immediately after?

Answer. I don't know what number there was in the boat; I believe, by what I understood, that the Spanish troops and some dragoons made them runaway.

Question. Did not the Governor send out the troops to defend the inhabitants, settled on the east of the St. Johns river, whenever the settlers complained of intrusion, either from the Indians or white people?

Answer. I never knew him to send any troops after the Indians; some of ourselves, went out sometimes when the Indians did mischief; we petitioned the Governor for leave to go out.

Question. When you went out in pursuit of the Indians who had done mischief, did you not always succeed in driving them off?

Answer. We never could overtake them.

Question. You have said there were Indians, living on Lake George. When did you first see them living there?

Answer. I don't know if they were living there; they went backwards and forwards there.

Question. You have said that the Indians were driven in on this province by the invasion of General Jackson. Was that before the year 1818; and did you ever see more Indians on that lake after 1818 than you had ever seen there before that time?

Answer. I think there were more Indians on Lake George after 1818, that there were before they were driven down here by General Jackson.

Question. Could a settlement have been made upon Lake George with safety to either persons or property before the year 1815?

Answer. I believe not.

The counsel for the United States objected to all the testimony of this witness, in relation to the disturbed state of the country, as being irrelevant; which objection was overruled by the court, and the testimony admitted.

[No. 3.]

DEPOSITION OF ALVAREZ, IN BREWARD'S CASE.

Offered and read by the U. States.

SUPERIOR COURT—*East Florida, July Term,* 1834.

ZEPHANIAH KINGSLEY *vs.* THE UNITED STATES.	Land Claim. 16,000 acres.

The testimony of Antonio Alvarez, taken under commission issued from this court and duly returned in the case of John Breward vs. the United States, and offered and read in evidence in this case on the part of the United States, the same being so copied as to be made applicable to this case, to wit:

Interrogatories to be propounded to Antonio Alvarez, Esquire, a witness to be sworn and examined on behalf of the United States, before Elias B. Gould and John C. Cleland, Esquires.

First. Are you a native of East Florida or not?

Second. What is your age?

Third. How long have you resided in the city of St Augustine, in East Florida?

Fourth. Did you hold any office in East Florida before the transfer of this province to the United States? If you did, please to state what office, and when and how long you discharged the duties of said office.

Fifth. Did you at any time act as clerk in the Governor's Secretary office, or in the office of the escribano or not? If you did, please to state which, when, and how long.

Sixth. In what office where concessions of land made and kept in East Florida, before the transfer of that province to the United States?

Seventh. In what office were royal titles (real titles) made and kept in East Florida before the transfer of said province to the United States?

Eighth. In what office should the papers now be found deposited, which were referred to in the 6th and 7th preceding interrogatories? Is or is not the public archives the proper place of deposit for said papers?

Ninth. Are you the keeper of the public archives of East Florida, or not? If you are, please to state how long you have held said office?

Tenth. Please to name the several persons who held and exercised the office of Governor of the province of East Florida, between the years 1784 and 1821, and the time when each of said persons entered upon the discharge of his duties as such Governor, and when they respectively ceased to discharge the said duties?

Eleventh. Is there any order on file in the said archives under your charge from the King of Spain, or from the council of the Indies requiring said Governor to render an account of his administration during the time when he held and discharged the duties of said office of Governor as aforesaid? If there is, please state to which of said Governor's said order was directed, and annex to your answer a copy thereof.

Twelfth. Were any of said Governors ever required to render such account? If yea, state which of them.

Thirteenth. Did any of said Governors ever render such an account? If they did, please to state which of them, when it was made, and *particularly* whether such account contained a statement of the number of grants or concessions of land made by said Governor during such administration, with the name (or names) of each grantee (or grantees,) and the number of acres of land granted to each.

Fourteenth. Is there any copy of such an account made by any of said Governors now on file in the archives under your charge? If there is, please to annex a copy thereof to your answer.

Fifteenth. Did any of said Governors ever undergo a residencia in said province? If yea, which of them, and when.

Sixteenth. Did any of said Governors ever render an account to the King, Captain General Intendant of Cuba, or any other officer, of the lands granted by them, except in the single case of the exchange of lands for a vessel with Juan Russell, or not? If they did, please to state which of them, and of what said account consisted; and state, also, the particulars of the case of Juan Russel.

THOS. DOUGLAS,
United States Attorney, &c.

CROSS INTERROGATORIES.

First. Is not the case of John Russell, a matter of record in your office; and are not all the proceedings set forth in writing thereof?

Objcetion. To so much of the 16th direct interrogatory as makes inquiry as to the case of Juan Russell, and the particulars thereof, from the witness, we object, because the testimony of the witness is not the best evidence in the case. The question itself supposes that John Russell's case is of record, in writing, in the office of the archives, and a copy of that record is better evidence of its contents, than the verbal testimony of the witness.

LANCASTER & SMITH,
For Claimant.

The answers of Antonio Alvarez, to the interrogatories and cross interrogatories hereunto annexed, taken before the commissioners appointed for that purpose, taken in behalf of the United States.

To the first interrogatory. Witness answers: I am a native of East Florida.

Second. To this he answers: My age is forty-two years.

Third. To this he answers: St. Augustine has always been my residence. I was absent for sometime in 1809 and 1810, in the Havana.

Fourth. To this he answers: I was clerk in the Government Secretary's office from 1807, to the change of government, during which time I was absent in the year 1809, and part of 1810, and parts of 1814 and 1815.

Fifth. To this he answers: I was clerk in the Government Secretary's office as stated in the preceding answer. I also acted as clerk in the office of the escribano for a few months in the year 1814.

Sixth. To this he answers: Concessions of land were made and kept in the office of the Secretary of the Government.

Seventh. To this he answers: Royal or real titles were made and kept in the office of the escribano.

Eighth. To this he answers. The proper place for the deposite of such papers, is the office of the public archives.

Ninth. To this he answers: I am the keeper of the public archives, and I have held the office since 1829.

Tenth. To this he answers: Zespedez, from 1784 to 1790; Quesada, from 1790 to 1796; White from 1796 to 1811; Estrada, from 1811 to June 1812; Kindelan, from 1812, I believe, to May 1815; Estrada the balance of 1815; and Coppinger, from 1816, to the change of flags. My knowledge of the time of the Government of Zespedez and Quesada, is derived from the information I obtained in the office of the Secretary of the Government.

Eleventh. To this he answers: I know of no such order.

Twelfth. To this he answers: I know of none.

Thirteenth. To this he answers: None of the Governor made such account.

Fourteenth. To this he answers: There is no such document on file in my office.

Fifteenth. To this he answers: I know of no Governor of East Florida who underwent such residencia.

Sixteenth. To this he answers: The Governors of East Florida never rendered an account of the lands granted by them except in the case of the exchange of four thousand acres of land for a schooner with John Russel.

First cross interrogatory. To this he answers: I answer in the affirmative.

ANTONIO ALVAREZ.

TERRITORY OF FLORIDA, *County of St. Johns, ss.*

We whose names are hereunto subscribed, commissioners, named in the annexed commission, do certify, that after being sworn ourselves, we did examine the witness named in said commission under oath, and his answers to the interrogatories and cross interrogatories annexed to said commission, are truly and correctly herein set forth.

Given under our hands, at St. Augustine, the 6th August 1834.

JOHN C. CLELAND, } *Commissioners.*
E. B. GOULD. }

[No. 4.]

DECREE IN RUSSELL'S CASE.

Decree in the case of Juan Russel, offered and read by U. S. Attorney.

[TRANSLATION.]

Under date of the 14th of June last, his excellency, the minister of the royal domain, tells me what follows: "I have given to the King an account of your excellency's letter, No. 9. of the 20th of November last, in which you inform of what was directed to you by the Governor of East Florida, on the occasion of his having given to Don Juan Russell, one thousand acres of land in exchange for a schooner, which he wanted for the royal service, and which, with all its appurtenances, was valued two thousand and six hundred dollars. His majesty, being informed of the whole transaction, has been pleased to approve for this time only the said determination, in consideration of the absolute want of funds in the said province, and commands me to charge you again, as I do charge you, to comply with the provisions of the royal orders of the 14th November of 1804, and of the 31st March, 1806, which prohibit the alienation of the royal lands which was made in favor of foreigners, and which provisions ought to be complied with rigorously in future. This, by order of his majesty, I communicate to your excellency for your knowledge and government."

And I communicate the same to your excellency for the corresponding effect on your part. God preserve your excellency many years. Havana, 4th March, 1815.

APODACA.

His excellency, the Governor of East Florida.

St. Augustine, 21st November, 1829. I certify that the preceding is a correct translation of the Spanish document annexed.

A. GAY,
Translator and Interpretor of the superior court.

And afterwards, at the same term of July, in the year of our Lord, one thousand eight hundred and thirty-four, to wit: on Monday the thirty-seventh day of said term, and the twenty-fourth day of November, the following entry of record was made in this cause, to wit:

CONTINUED FOR FURTHER PROOF.

ZEPHANIAH KINGSLEY
against
THE UNITED STATES OF AMERICA.
} Land Claim. 16,000 acres.

This case having been heard and submitted to the court, and the court having examined the same, doth order that this cause be continued, with leave to the parties to introduce further proof therein.

And afterwards, before the superior court for East Florida, holden at the court house in the city of St. Augustine, at the term of July, in the year of our Lord one thousand eight hundred and thirty-five, to wit: on Monday, the fourth day of said term, and the twentieth of said month, the following entry of record was made in this cause, to wit:

FURTHER PROOF OFFERED, AND LEAVE TO AMEND.

ZEPHANIAH KINGSLEY
against
THE UNITED STATES OF AMERICA. } Land Claim. 16,000 acres.

This day came as well the counsel for the said claimant, as the counsel of the said United States, and this cause having been continued, after the hearing thereof, at the last July term of this court, for further proof; the counsel for the said claimant this day offered and read in evidence in this case, the testimony of John M. Bowden, Michael Sloame, and William Bardin, taken under commission in this case. The counsel for the said claimant then offered in evidence a survey of 10,880 acres, dated 8th February, 1821, to the receiving of which in evidence the counsel for the United States objected, because the said survey bears date after the 24th January, 1818, and because the said survey does not follow the calls of the grant. The claimant's counsel then offered in evidence a survey of 2,500 acres, dated 27th March, 1818; also a survey of 2,560 acres, dated 2d April, 1818; to the receiving of which two last mentioned surveys in evidence the counsel for the United States objected, because the said surveys bear date after the 24th January, 1818, and because the said surveys do not follow the calls of the grant, and call for land not claimed in the petition of the claimant.

On the motion of the claimant's counsel leave is given him to amend the petition filed in this case.

[No. 5.]

Being part of the further proof offered by the claimant under the leave of the court.

COMMISSION TO EXAMINE BOWDEN, BEARDEN, AND SLOANE.

TERRITORY OF FLORIDA.

In the name and by the authority of the United States of America.

To Oliver Wood, and Moses Curry, greeting:

Whereas, a certain claim to land is now depending in the superior court tor the eastern district of Florida, in which said claim Zephaniah Kingsley is claimant, and the United States of America defendant; and it being necessary to the investigation of said claim to have the testimony of John M. Bowden, William Bearden, and Michael Sloane, the said Oliver Wood and Moses Curry having been named by the said claimant, and the said defendant, as commissioners to examine said witnesses on certain interrogatories:

Know ye, that confiding in your prudence, ability, and integrity, you are, by these presents, appointed, and full power and authority are hereby given to you, diligently to examine the aforesaid witnesses upon certain interrogatories to be exhibited to you, as well on the part of the said claimant as on that of the said defendant, or of either party in said cause; and therefore you are authorized and requested on a certain day, or on certain days, and at a certain place or at certain places, to cause the said witnesses to come before you, and then and there to examine each of them apart, on the said interrogatories, on their corporal oaths or solemn affirmations, first taken before you; and to take such their examinations and reduce them to writing on paper, and when you shall have so taken them, to sign the same with your name, and enclose and seal the whole together, conformably to the instructions hereunto subjoined.

And you are hereby further requested that, before you act in or be present at the swearing or solemn affirming and the examining of any of the said witnesses, you do make oath or solemn affirmation, that, according to the best of your knowledge, you will truly, faithfully, and without partiality to any or either of the parties in said cause, take the examination and deposition of every witness produced and examined by virtue of this commission upon the interrogatories hereto annexed and produced to you; and that you will not publish or make known to any person whomsover, except the clerk or clerks who may by you be employed and sworn to secrecy in the execution of this commission, the contents of any of the depositions of the witnesses, to be taken by you in this commission named, until publication shall pass by rule or order of said superior court.

Witness, the honorable Robert Raymond, Reid judge of our superior court, for the district of East Florida, this twenty-third day of June, A. D. 1835.

[SEAL.] K. B. GIBBS, *Clerk.*

INSTRUCTIONS.

When the testimony is taken, the commissioners are required to sign their names at the bottom of each sheet of the depositions, and of the whole, after fixing and sealing the several sheets together; then to enclose the whole examination, commission and all, in an envelope, sealed up, with their names written on the outside across the seal, and to endorse the packet on the corner thereof, with the names of the parties, and to direct the same to Kingsley B. Gibbs, clerk of said court, at St. Augustine, and deliver it to him or put it in the post office.

INTERROGATORIES TO BOWDEN, BEARDEN AND SLOANE.

SUPERIOR COURT, *East Florida.*
ZEPHANIAH KINGSLEY,
vs. } 16,000 acres of Land.
THE UNITED STATES.

Interrogatories to be propounded to John M. Bowden, William Barden and Michael Sloane, residing in Duval county. Witnesses to be sworn and examined on behalf of the claimant in the above entitled cause.

First. Are you acquainted with Zephaniah Kingsley, claimant in the above entitled cause? If so, how long have you been acquainted with him, and state where he was living when you became acquainted with him?

Second. Do you or not know a place claimed by said Kingsley, known as Laurel Grove? If you do, state where that is situated.

Third. Do you or not know any thing of a tract of land claimed by said Kingsley as a mill seat? If you do, state where that is situated, on which side of the St. Johns river, and how far from said Laurel Grove? Do you know whether said mill seat tract was ever surveyed, and by whom? Did you ever see any of the lines of said survey?

Fourth. Do you or not know whether said Kingsley was at any time in the possession of said mill seat tract, and whether he was or not compelled to abandon the possession of said land, by what cause?

Fifth. Can you or not state what the state of that part of the country, where said mill seat is located, was shortly before and between the years 1817 and 1822?

Sixth. Was it or not unsafe to reside in that part of the country during that time, and could a person have erected or built any expensive works or buildings there with any security; and would they not have been continually subjected to be destroyed in consequence of the disturbed state of the country?

Seventh. Was not all that part of the country, during the time above stated, infested by hostile parties of whites, Indians and negroes?

Eighth. Did or not the said Kingsley ever make any attempt or preparations for building a water saw-mill on said mill seat? If he did, please to state what attempt or preparations he made to do so, and why the same were abandoned?

Ninth. Did you ever see any of the preparations made by said Kingsley to erect said mill? If so, state all you know and saw, and whether there are still remaining any part of any foundation made by him on said place, or frame gotten out and prepared by him for erecting said mill? State all you know and have seen, and the time when you saw such preparations, foundation, or mill frame, and what became of them?

Tenth. Did or not the said Kingsley, as far as he could, from the disturbed state of the country, always continue to exercise ownership over said land, and to claim the same?

Eleventh. Did he or not, said Kingsley, as soon as the state of the country would permit, retake possession of said land, and appoint agents to take charge of it in his absence? State who those agents were, and when, as nearly as you can recollect, they were placed there by Kingsley.

B. A. PUTNAM,
Atty. for Claimant.

The United States, by their counsel, object to all the preceding direct interrogatories, (except the first and second) and particularly to the 7th; because they are leading, irrelevant, and inadmissible.

THOS. DOUGLAS,
U. States Atty.

Cross interrogatories to be propounded, on behalf of the United States, to John M. Bowden, William Bardin, and Michael Sloane, the above named witnesses.

First. If you answer the third direct interrogatory in the affirmative, please to state whether the mill seat tract therein mentioned is not the same as that spoken of by you in answer to the 2d direct interrogatory, called Laurel Grove?

Second. If you answer the 4th direct interrogatory in the affirmative, please to state how you know that said Kingsley was ever in possession of said mill seat tract, and particularly whether his having been at Laurel Grove, is not considered by you as his having been in possession of said mill seat tract.

Third. If you answer the 5th direct interrogatory in the affirmative, please to state particularly what you mean by a *mill seat.* Is there any stream of water upon the said mill seat tract, sufficient to carry a saw mill, with a suitable fall for such mill? If there is, please to describe it, and state what it is called.

Fourth. If you answer the 6th direct interrogatory in the affirmative, please to state whether it was not quite as safe to reside within the part of the country, therein referred to, between the years 1817 and 1822 as it was between the years 1812 and the year 1817; and has it not been safe to reside there since the year 1822?

Fifth. If you answer the 7th direct interrogitory in the affirmative, please to state whether that part of the county was not as much infested by hostile parties of whites, Indians, and negroes, between the years 1812 and 1817 as it was between the years 1817 and the year 1822. And was it not considered by the public in general, as unsafe to reside there for some years previous to, and in the year 1817, as it was after that period up to 1822; and has it not been safe to reside there since 1822?

Sixth. Is not the said Kingsley a very intelligent man; and would he not have been likely to have heard of these dangers before (and in) the year 1817? Had he not then lands upon the St. John's river, both above and below the said mill-seat tract?

Seventh. If you answer the 8th direct interrogatory, in the affirmative, please to state how you know and from whom you received your information, that said Kingsley ever made any such attempt or prepation as is therein mentioned? Did you not receive your information from said Kingsley himself?

Eighth. If you ever saw any such preparations, as are mentioned in the 9th direct interrogatory, please to state how you know that they were made by said Kingsley? Might they not have been made by some other person; and do you not know that they were made by some other person or persons, before the year 1817?

Ninth. If you answer the 10th direct interrogatory, in the affirmative, please to state how you know that said Kingsley continued to exercise ownership over the said (mill seat) land? Was it not the circumstance or his sometimes being at Laurel Grove, that induced you to think that he has exercised such ownership?

Tenth. If you answer the 11th direct interrogatory in the affirmative, please to state how you know that said Kingsley exercised acts of ownership over said mill seat tract? What do you call exercising acts of ownership over a tract of land? And is not your opinion of said Kingsley's having exercised acts of ownership over said mill seat tract, formed from the circumstance of his having sometimes visited Laurel Grove?

Eleventh. Had not the said Kingsley a dwelling house and orange grove at Laurel Grove in the year 1817, and ever since? When was the first time that said Kingsley was at Laurel Grove, or at said mill seat tract after the year 1817? Please state particularly when he first visited *each* of those places.

THOS. DOUGLAS,
United States Attorney.

We, the undersigned, before entering upon the duties imposed upon us, by the annexed commission, do solemnly swear, that, according to the best of our knowledge, we will truly and faithfully, and without partiality to any or either of the parties in said cause, take the examination and deposition of every witness produced and examined by virtue of this commission, upon the interrogatories thereunto annexed, and produced to us; and that we will not make known or publish to any person, whomsoever, except the clerk or clerks, who may by us be employed and sworn to secrecy, in the execution of said commission, the contents of any of the depositions of the witnesses to be taken by us, in said commission named, until publication shall pass by will or order of said superior court.

OLIVER WOOD,
MOSES CURRY.

Sworn to, and subscribed before me, July 1st, 1835.

JOS. E. SUMMERALL,
Justice of the Peace.

ANSWERS OF BOWDEN.

The undersigned commissioners, having caused *John M. Rowden*, one of the witnesses named in the annexed commission, to come before them, who after being duly sworn, apart from the other witnesses, answers as follows, to wit:

To the first interrogatory, the witness answers, that he is acquainted with Zephaniah Kingsley, the claimant in the above entitled cause. That he has been acquainted with the claimant, twenty-eight or twenty-nine years; that claimant was living at Laurel Grove, when he, witness, became acquainted with him.

To the second interrogatory, the witness answers, that he does know a place, claimed by said Kingsley, known as Laurel Grove; that said place is situated on the west side of the river St. Johns at the mouth of the Doctor's lake.

To the third interrogatory, the witness answers, that he does know of a tract of land claimed by said Kingsley, as a mill seat; that said tract of land is situated on the north side of the Doctor's lake on the west side of the St. Johns river; that said tract of land joins the said Laurel Grove tract; that he does not know of his own knowledge, that said mill seat tract, was ever surveyed; that he has seen some of the lines of said survey.

To the fourth interrogatory, the witness answers, that he does know that said Kingsley has been in possession of the said mill seat tract, that he, Kingsley, was compelled to abandon the possession of the said land, in consequence of the revolution of 1812 and 1813.

To the fifth interrogatory, the witness answers, that he cannot state what the state of that part of the country was in which said mill seat tract is located, before and between the years 1817 and 1822; that it was unsafe for people to reside in that part during the time alluded to, in consequence of the hostilities of the indians.

To the sixth interrogatory, the witness answers, that it was unsafe to reside in that part of the county during that time; that a person could not have erected or built any expensive works or buildings there with security; that they would have been continually subjected to be destroyed in consequence of the disturbed state of the country.

To the seventh interrogatory, the witness answers, that all that part of the country; during the time above stated was infested by hostile parties of whites, indians, and negroes.

To the eighth interrogatory, the witness answers, that the said Kingsley did make an attempt to build a water saw-mill, on said mill-seat; that he got out a part of the frame for said mill; that it was abandoned in consequence of the troubled state of the times.

To the ninth interrogatory, the witness answers, that he did see some of the preparations made by the said Kingsley, to erect said mill; that he saw the greater part of the timber requisite for said mill; that he does not know of any foundation having been laid; that a part of said frame is now remaining; that he has stated all that he knows and saw; that he said preparations prior to 1817; that he cannot state more particularly as to the time he saw them; that said timber was burnt.

To the tenth interrogatory, the witness answers, that the said Kingsley, so far as he could, from the disturbed state of the country, did always continue to exercise ownership over said land, and to claim the same.

To the eleventh interrogatory, the witness answers, that the said, Kingsley did, as soon as the state of the country would permit, retake possession of said land, and appointed agents to take care of it in his absence; that James Hoblkirk was an agent for that purpose, and placed there by said Kingsley, as near as witness recollects, about the year 1825.

To the first cross interrogatory, the witness answers, that the mill seat tract, mentioned in his answer to the third direct interrogatory, is not the same as that spoken of by him, in answer to the second direct interrogatory, called Laurel Grove.

To the second cross interrogatory, the witness answers, that he knows that Kingsley was in possession of said mill seat tract, by having seen him at work thereon; that his having been at Laurel Grove, is not considered by witness as his having been in possession of the said mill seat tract, that they were separate tracts.

To the third cross interrogatory, the witness answers, that he means by a mill seat, a situation for a mill with a suitable stream of water to convey the same; that there is a stream of water upon the said mill seat tract, sufficient to carry a saw mill with a suitable fall for said mill; that said creek is about two miles in length, and about forty or fifty yards wide; is known by the name of Kingsley's mill creek.

To the fourth cross interrogatory, the witness answers, that it was more safe to reside in that part of the country, between the years 1817 and 1822, than it was between the years 1812 and 1817; that it has been safe to reside there since 1822.

To the fifth cross interrogatory, the witness answers, that that part of the country was as much infested by hostile parties of whites, Indians, and negroes, between the years 1812 and 1817, as it was between the years 1817 and 1822; that it was considered by the public, in general, as unsafe to reside there for some years previous to, and in the year 1817, as it was after that period up to 1822; that it has been considered safe to reside there since 1822.

To the sixth cross interrogatory, the witness answers, that the said Kingsley is a very intelligent man; that he would have been likely to have heard of these dangers before, and in the year 1817; that he then had lands upon the St. John's river, both above and below the said mill seat tract.

To the seventh cross interrogatory, the witness answers, that he knows that said Kingsley made such attempt to build, from his own knowledge, having seen it himself; that he did not receive his information from Kingsley.

To the eighth cross interrogatory, the witness answers, that he knows that said preparations were made by the said Kingsley himself; that he saw him there at the time, and saw his hands engaged in the work; that they could not have been made by any other person; that he knows that they were not made by any other person prior to 1817.

To the ninth cross interrogatary, the witness answers, that he knows from his own knowledge, that said Kingsley continued to exercise ownership over said mill seat; that he heard him claim it, and forbid others from interfering therewith; that it was not from the circumstance of his living at Laurel Grove, that induced witness to think that Kingsley exercised such ownership.

To the tenth cross interrogatory, the witness answers, that he knows that Kingsley exercised acts of ownership over the said mill seat tract, by forbidding others to settle on the said land, asserting that it belonged to him; that he calls the act of preventing other persons from settling on land, as exercising act of ownership over the land; that his opinion of said Kingsley's having exercised acts of ownership, is not formed from the circumstance of said Kingsley's having visited Laurel Grove.

To the eleventh cross interrogatory, the witness answers, that said Kingsley had an orange grove at Laurel Grove in the year 1817, and ever since; that his dwelling house had been destroyed during the revolution; that he cannot state at what time the said Kingsley first visited Laurel Grove, and the said mill seat tract, after the year 2817.

his
JOHN M. ⋊ BOWDEN,
mark.

Sworn to and subscribed before us, July 1st, 1835.

The witness not knowing how to write his name, made his mark.

Oliver Wood,
Moses Curry.

ANSWERS OF SLOANE.

The undersigned commissioners having caused *Michael Sloane*, one of the witness named in the annexed commission, to come before them, who after being duly sworn, (apart from the other witnesses) answers as follows, to wit:

To the first interrogatory, the witness answers, that he is acquainted with Zephaniah Kingsley, the claimant in the above entitled cause; that he has been acquainted with him twenty-five years or upwards; that said Kingsley was living at Laurel Grove when he became acquainted with him.

To the second interrogatory, the witness answers, that he does know of a place claimed by said Kingsley, known as Laurel Grove; that it is situated on the west side of the river St. Johns at the mouth of Doctor's lake.

To the third interrogatory, the witness answers, that he does not know of said Kingsley's claiming any tract of land as a mill seat tract.

To the fourth interrogatory, the witness answers, that he does not know whether or not said Kingsley was, at any time in possession of said mill seat tract, nor whether or not, he was ever compelled to abandon the possession of said land, nor by what cause.

To the fifth interrogatory, the witness answers, that he does not know where said mill seat tract is located; therefore, cannot state what was the state of such particular part of the country.

To the sixth interrogatory, the witness answers, that he does not know where the said mill seat tract is located; therefore, is not able to testify as to the state of that particular part of the country, nor whether or not work might have been done or buildings have been erected in safety.

To the seventh interrogatory, the witness answers, that he does not know what part of the country is referred to.

To the eighth interrogatory, the witness answers, that he cannot answer this interrogatory for the reasons before stated.

To the ninth interrogatory, the witness answers, that he never saw any preparations made by said Kingsley to erect said mill.

To the tenth interrogatory, the witness answers, that he cannot answer this interrogatory for the reasons aforesaid.

To the eleventh interrogatory, the witness answers, that he is not able to answer this interrogatory.

To the first cross interrogatory, the witness answers, that he did not answer the third direct interrogatory in the affirmative; that he does not know that Laurel Grove was ever called a mill seat tract.

To the second cross interrogatory, the witness answers, that he does not answer the fourth direct interrogatory in the affirmative.

To the third cross interrogatory, the witness answers, that he does not answer the fifth direct interrogatory in the affirmative.

To the fourth cross interrogatory, the witness answers, that he did not answer the sixth direct interrogatory in the affirmative.

To the fifth cross interrogatory, the witness answers, that he did not answer the seventh direct interrogatory in the affirmative.

To the sixth cross interrogatory, the witness answers, that said Kingsley is an intelligent man; that he cannot further answers this cross interrogatory.

To the seventh cross interrogatory, the witness answers, that he did not answer the eighth direct interrogatory in the affirmative.

To the eighth cross interrogatory, the witness answers, that he never saw any such preparations as are referred to.

To the ninth cross interrogatory, the witness answers, that he did not answer the tenth direct interrogatory in the affirmative.

To the tenth cross interrogatory, the witness answers, that he did not answer the eleventh direct interrogatory in the affirmative.

To the eleventh cross interrogatory, the witness answers, that the said Kingsley did not have a dwelling house at Laurel Grove in 1817; that he had an orange grove at that place in 1817, and ever since; that he cannot further answer this cross interrogatory.

his
MICHAEL ⋊ SLOAN,
mark.

Sworn to, and subscribed before us, July 1st, 1835.

The witness not knowing how to write his name, made his mark.

Oliver Wood,
Moses Curry.

ANSWERS OF BARDEN.

The undersigned commissioners, having caused *William Barden*. one of the witnesses named in the annexed commission, to come before them, who, after being duly sworn, (apart from the other witnesses) answers as follows, to wit:

To the first interrogatory, the witness answers, that he is acquainted with Zephaniah Kingsley, the claimant, and has been acquainted with him since the year 1806; that he was living at a place called Laurel grove, when witness became acquainted with him.

To the second interrogatory, the witness answers, that he does know a place called Laurel Grove claimed by said Kingsley; that it is situated at the mouth of Doctor's lake, on the west side of the river St. Johns.

To the third interrogatory, the witness answers, that he does know of a tract of land claimed by said Kingsley as a mill seat; that it is situated on the west side of the St. Johns river, and adjoining the Laurel Grove tract; that he never saw it surveyed, but has seen a plat, signed by George Clark, and has seen the lines corresponding with said plat.

To the fourth interrogatory, the witness answers, that he considers that Kingsley was in possession of the said land from the fact that said Kingsley claimed the same and kept others from settling on it, and cutting the lumber; that he, Kingsley, was compelled to leave the said place in consequence of the Indians.

To the fifth interrogatory, the witness answers, that shortly before and between the years 1817 and 1822, that part of the country where said mill seat tract is situated was infested by hostile Indians, which rendered it unsafe for any person to reside thereabout's; that one person was killed on the said tract in the year 1818.

To the sixth interrogatory, the witness answers, that it was unsafe to reside in that part of the country during that time; that a person could not have erected or built any expensive works or buildings there with any security; that they would have been continually subjected to have been destroyed in consequence of the disturbed state of the country.

To the seventh interrogatory, the witness answers, that all that part of the country, during the time above stated, was infested by hostile parties of whites, Indians and negroes.

To the eighth interrogatory, the witness answers, that he does not know, of his own knowledge, that said Kingsley ever made any attempt or preparations for building a saw-mill on said mill seat tract.

To the ninth interrogatory, the witness answers: That he has seen lumber on the said tract, and was told that it was got by said Kingsley for the purpose of building a saw-mill; that he afterwards saw there had been a dam erected on each side of the stream, and in the bottom of the stream saw timbers laid, as witness supposed for the sills of a saw mill; that he only knows, from hearsay, that said preparations were made by said Kingsley; that a part of the said preparations are still remaining, and to be seen on said tract; that he first saw the said timber, above mentioned, about the year 1817 or 1818, and shortly after saw the dam and sills aforesaid; that the said timber was mostly destroyed by fire.

To the tenth interrogatory, the witness answers, that as far as he, witness, could discover, said Kingsley continued to exercise ownership over the said land and to claim the same.

To the eleventh interrogatory, witness answers, that the said Kingsley did, as soon as the state of the country would permit, retake possession of said land, and appointed agents to take charge of it in his absence; that those agents were John M. Bowden, and James Hobkirk; that said Bowden was first appointed as agent, witness does not recollect at what time; that James Hobkirk had charge of said place about the years 1823 or 1824.

To the first cross interrogatory, the witness answers, that the mill seat tract is not the tract called Laurel Grove.

To the second cross interrogatory, the witness answers, that he knows, of his own knowledge, that said Kingsley was in possession of said mill seat tract; that Kingsley's having been at Laurel Grove, is not considered by him (witness) as having been in possession of said mill seat tract.

To the third cross interrogatory, the witness answers, that he calls a stream of water sufficiently large to carry a mill, when so located as to answer the purpose for turning a mill, "a mill seat"; that there is a stream of water upon the said mill seat tract sufficient to carry a saw mill, with a sufficient fall for said mill; that it is sufficient to carry two or three saws, and is called the South Prong of McGirt's creek.

To the fourth cross interrogatory, the witness answers, that he considers that it was not as safe to reside in that part of the country, referred to in the sixth direct interrogatory, between the years 1817 and 1822, as it was between the years 1812 and 1817; that it has been safe to reside there since the year 1822.

To the fifth cross interrogatory, the witness answers, that that part of the country was as much infested by hostile parties of whites, Indians, and negroes between the years 1812 and 1817, as it was between the years 1817 and 1822; that it was considered by the public, in general, as unsafe to reside there for some years previous to, and in the year 1817, as it was after that period, until the exchange of flags; that it has been safe to reside there since 1812.

To the sixth cross interrogatory, the witness answers, that the said Kingsley is a very intelligent man, and would have been likely to have heard of these dangers before, and in the year 1817; that he then had lands both above and below said mill seat tract, on the St. Johns river.

To the seventh cross interrogatory, the witness answers, that he does not answer the eighth direct interrogatory in the affirmative.

To the eighth cross interrogatory, the witness answers, that he does not know that said preparations were made by said Kingsley; they might have been made by some other person; that he does not know that they were made by any other person or persons.

To the ninth cross interrogatory, the witness answers, that he knows that the said Kingsley continued to exercise ownership over said mill seat land from his own knowledge; that the said Kingsley forbid the said witness to settle on the said mill seat tract, asserting that it belonged to him, the said Kingsley; that it was not the circumstance of the said Kingsley's having visited Laurel Grove, that induced witness to think that the said Kingsley exercised such ownership.

To the tenth cross interrogatory, the witness answers, that he knows that said Kingsley exercised acts of ownership over the said mill seat tract from his own knowledge; that he forbade others to settle on the same, and requested witness to give him or his agent notice of any person cutting timber off the said mill seat tract; which acts witness calls acts of ownership over a tract of land; that his opinion of said Kingsley's having exercised acts of ownership over said mill seat tract, is not formed from the circumstance of said Kingsley's having sometimes visited Laurel Grove.

To the eleventh cross interrogatory, witness answers, that said Kingsley had an orange grove at Laurel Grove in 1817, and ever since; that he had no dwelling house at Laurel Grove in 1817; that he cannot state when said Kingsley first visited Laurel Grove, or the mill-seat tract, after the year 1817; that the said Kingsley was frequently at those places; that he cannot state particularly at what time he first visited each of those places.

WILLIAM BARDIN.

Sworn to, and subscribed before us, July 9th, 1835.

Moses Curry, } *Comm'rs.*
Oliver Wood, }

The counsel for the United States objected to all the hearsay testimony of the above witnesses.

[Nos. 6, 7, 8.]

THREE CERTIFICATES AND PLATS OF SURVEY.

Being the annexed three certificates and plats of survey. No. 6, of 10,880 acres; No. 7, of 2,500 acres, and No. 8, of 2,560 acres: certified by the keeper of the public archives of East Florida, as copies of the originals; and constituting part of the further proof offered by the claimant, under the leave of the court; and their reception in evidence objected by the counsel for the United States.

[Here is to follow the said annexed three certificates and plats of survey.]

[No. 6.]

Don George Clarke, Captain of the northern district of East Florida, and Surveyor General of the Province by commission from his Government. I certify that I have measured and bounded to Don Zephaniah Kingsley, ten thousand eight hundred and eighty acres of land, on the northwest side of Doctor's lake, to complete sixteen thousand acres that were granted to him by the Government, on the second of December, one thousand eight hundred and sixteen, for the construction of a saw-mill; which land conforms with the following plat and its original, which I preserve. Northern district, eighth of February, one thousand eight hundred and twety-one.

(Signed.) GEORGE I. F. CLARKE.

I certify the foregoing to be a true and correct translation of the Spanish document hereunto annexed.

JOS. S. SANCHEZ.
In. and Tr. Sup. Court, E. D. F.

[No. 7.]

Don George Clarke, Lieutenant of Militia of St. Augustine, Florida, and Surveyor General of said Province, by appointment from his Government.

I certify that I have measured and delineated to Don Zephania Kingsley, two miles square of land, between Boggy swamp and Clapboard creek, in part of a greater quantity which was granted to him by the Government for the construction and supply of a water saw-mill, there not being vacant land sufficient in the place named in said concession, dated the second of December, one thousand eight hundred and sixteen; which land is conformable to the following plat and its original, kept in the field book under my charge. St. Mary's River, 27th of March, 1818.

(Signed.) GEORGE I. F. CLARKE.

I certify the foregoing to be a true and correct translation of the Spanish document annexed.

JOS. S. SANCHEZ,
In. and Tr. Sup. Court, E. D. F.

[No. 8.]

Don George Clarke, &c. I certify that I have measured and delineated to Don Zephaniah Kingsley, two miles square of pine land, on the west of Twelve Mile swamp, in part of a greater quantity which was granted to him by the Government for the construction and supply of a water saw-mill, their not being land sufficient at the placed named in the said concession, dated the second of December, one thousand eight hundred and sixteen; which land is bounded on the east by other lands which this same party interested has in said swamp, and agrees with the following plat and its original, kept in the field book under my charge. St. Mary's River, 2d April, 1818.
GEORGE I. F. CLARKE.

I certify the forgoing to be a true and correct translation of the Spanish document annexed.

JOS. S. SANCHEZ,
In. and Tr. Sup. Court, E. D. F.

And afterwards, to wit, on the 21st day of July, in the year of our Lord, one thousand eight hundred and thirty-five, the said claimant, by his said counsel, brought and filed in the clerk's office aforesaid, by permission of the court, his amendment to the said petition, which said amendment is in the words and figures following, to wit:

AMENDED PETITION.

SUPERIOR COURT, *East Florida, July Term* 1835.

ZEPHANIAH KINGSLEY *vs.* THE UNITED STATES.	Land Claim. 16,000 acres.

Amendment to Petition by permission of the Court.

To the honorable Robert Raymond Reid, judge of the superior court for East Florida, and specially authorized by law to adjudicate claims and titles to land in the district of East Florida aforesaid:

The amended petition of Zephaniah Kingsley, repectfully showeth unto your honor, that he claims title to a certain grant of land, containing 16,000 acres, situated within the district of East Florida, and the jurisdiction of this honorable court; part of said land, that is to say, 10,880 acres, lies on a creek which empties into the river St. Johns, called McGirt's creek, the place where said land, to wit, the said 16,000 acres was originally asked for by your petitioner, and granted to him by Governor Coppinger. Two thousand five hundred acres of said land are situated between Boggy swamp and Clapboard creek; and the remainder, to wit, two thousand five hundred and sixty, are situated on the west side of Twelve Mile swamp.

And your petitioner further showeth unto your honor, that his title to said 16,000 acres of land, is derived to him by a grant made by Governor Coppinger, the then Spanish Governor of East Florida, on the 2d December, 1816, upon his petition to said Coppinger, presented and dated November 20th, 1816, which said petition and decree of said Coppinger thereon are herewith filed, marked exhibit A, and prayed to be taken as a part of this petition.

And your petitioner further showeth unto your honor, that after the making of said grant, and as soon thereafter as the same could be done, Don George Clarke, then surveyor general of the Government of East Florida, proceeded to survey the said 16,000 acres of land for your petitioner, at the place named and pointed out in your petitioner's said petition to Governor Coppinger, to wit, on McGirt's creek, emptying in St. John's river, bounded southeast and south by land granted to A. Ferguson and Doctor's Lake; southwest and west by vacant lands; north by Don Juan McIntosh's land, and east by land of said Kingsley and the river St. Johns, and did actually survey for your petitioner at the place aforesaid, 10,880 acres of land, in part ed petition, they were made since the 24th day of January, A. D. 1818, and are not agreeable to the calls of the said supposed grant; and that they are therefore rendered null and void by the provision of the latter clause of the 8th article of the treaty between Spain and the said United States, of the 22d February, A. D. 1819. And this respondent farther saith, that the several tracts of land called for by said surveys, are at so great a distance apart that the timber upon any one of them could not be used to supply a mill built upon either of the others; and this respondent denies that said surveys were made as soon after the date of the said supposed grant, as the same could be done.

And this respondent also denies that the said Kingsley ever attempted to build the said mill, or that if he did, he was prevented from completing the same, by any such disturbed and dangerous state of the country as he has alleged, or that any such disturbed and dangerous state of the country existed, as necessarily would have prevented the completion of the said mill, had the same been commenced; and this respondent insists that the section of country in which the said Kingsley alleges that he attempted to build the said mill, was in quite as disturbed a state before, and at the very time when the said supposed grant is alleged to have been made, as it was afterwards; and that the said Kingsley, if he had any such grant, accepted the same and the conditions thereof, well knowing all the difficulties which attended a compliance therewith; and this respondent denies that the right and title of said Kingsley to said land, if he had a valid title thereto, was ever involved in an uncertainty, and insists that it is not competent for him to allege *a want of confidence* in his own Government or the tribunals thereof, as an excuse for a non-compliance with the said condition.

And this respondent denies that any of the causes alleged by said Kingsley, as an excuse for not building the said mill, (if any such existed, which is not admitted) were sufficient to absolve and discharge him from the performance of said condition, and insists that he was not so discharged, and that he never became invested with an absolute right, or any other right to said land, discharged of said condition, and insists that he has no right at all thereto.

And this respondent farther insists, that although no specific time was fixed by thesaid supposed grant for the building of said water saw-mill; yet it appears by the showing of the petitioner himself, that the inducement which moved the Spanish Government to make the said supposed grant (if any such was made,) was the utility and benefit which would accrue to the province by the building of said mill; and that it should therefore have been built within a reasonable time, which reasonable time has *long since* passed away; and that the said Kingsley, by his total neglect to perform the said condition, has lost all right to said land, if any he ever had thereto, and that he is now too late in offering to perform said condition.

And this respondent farther saith, that he is ignorant of the other matters and things in the said amended petition contained, and prays this honorable court to take care of, and protect such right and interest as the said United States shall appear to have in the premises.

And, now, having fully answered the matters and things in the said amended petition contained, he prays that the said United States may be hereof discharged, and that their reasonable costs and charges in this behalf, may be adjudged and decreed to them &c.

THOS. DOUGLAS,
U. S. Attorney.

And afterwards, to wit, on the twenty-eighth day of July, in the year of our Lord one thousand eight hundred and thirty-five, the said claimant, by his said counsel, brought and filed in the clerk's office aforesaid, his replication to the answer to amended bill; which is in the words and figures following; to wit:

REPLICATION TO ANSWER TO AMENDED PETITION.

SUPERIOR COURT, *East Florida.*

ZEPHANIAH KINGSLEY,
vs.
THE UNITED STATES.

The replication of Zephaniah Kingsley to the answer to the amended bill filed herein.

And the replicant, saving and reserving to himself all, and all manner of advantage of exception which may be had and taken to the manifest errors, uncertainties, and insufficiencies in the said answer of the said defendant, for replication thereunto says, that he does and will aver, maintain and prove his said bill to be true, certain and sufficient in the law to be answered unto by the said defendant; and that the answer thereto is very uncertain, evasive, and insufficient in the law to be replied unto by this replicant, without that, that any other matter or thing in the said answer contained, material or effectual in the law to be replied unto, confessed or avoided, traversed or denied, is true; all which matters and things this replicant is ready to aver, maintain and prove, as this honorable court shall order and direct, and humbly prays, as in and by his said bill he hath already prayed.

DRYSDALE & PUTNAM,
Attorneys.

And afterwards, at the same term of July, in the year of our Lord one thousand eight hundred and thirty-five, to wit, on Tuesday the eleventh day of said term, and the twenty-eighth of said month, the following entry of record was made in this cause, to wit:

CAUSE SUBMITTED.

ZEPHANIAH KINGSLEY,
against
THE UNITED STATES OF AMERICA.
Land Claim. 16,000 acres.

This day came, as well the counsel for the said claimant, as the counsel for the said United States; and the counsel for the said claimant having filed his amendment to the petition in this case, under the leave of the court, entered herein, on the 20th instant, to which amendment an answer has been filed by the United States attorney, and this claim was submitted to the court for its decree therein.

And afterwards, at the same term of July, in the year of our Lord one thousand eight hundred and thirty-five, to wit, on Monday, the fortieth day of said term, and the twenty-first day of the month of September, the following entry of record was made in this cause, to wit:

PROOF OFFERED BY UNITED STATES.

ZEPHANIAH KINGSLEY
vs.
THE UNITED STATES.
} Land Claim. 16,000 acres.

This day came as well the counsel for the said claimant, as the counsel of the United States, and the said counsel for the United States offered in evidence the deposition of Antonio Alvarez, taken under commission issued in this case, which was received in evidence subject to the objection of the said claimant's counsel noted on said deposition.

[No. 9.]

COMMISSION TO EXAMINE ALVAREZ.

Offered and read by the Counsel for the United States.

Territory of Florida: In the name and by the authority of the United States of America.

To John C. Cleland, Esq. Greeting:

Whereas, a certain claim of land is now depending in the superior court for the Eastern district of Florida, in which said claim, Zephaniah Kingsley is claimant, and the United States of America defendant; and it being necessary to the investigation of said cause, to have the testimony of Antonio Alvarez, the said John C. Cleland, having been named by the said claimant and the said defendant as commissioner to examine said witness on certain interrogatories:

Know ye, that confiding in your prudence, ability and integrity, you are, by these presents appointed, and full power and authority are hereby given to you, diligently to examine the aforesaid witness upon certain interrogatories to be exhibited to you, as well on the part of the said claimant, as on that of the said defendant, or of either party in said cause; and therefore, you are authorized and requested, on a certain day, or on certain days, and at a certain place or at certain places, to cause the said witness to come before you, and then and there to examine him on the said interrogatories, on his corporal oath or solemn affirmation, first taken before you; and to take such his examination, and deduce it to writing, on paper, and when you shall so have taken it, to sign the same with you name, and enclose and seal the whole together, conformably to the instructions hereunto subjoined.

And you are hereby further requested, that before you act in, or be present at the swearing or solemn affirming and examination of the said witness, you do make oath or solemn affirmation, that according to the best of your knowledge, you will truly, faithfully, and without partiality to any or either of the parties in said cause, take the examination and deposition of the witness produced, and examined by virtue of this commission, upon the interrogatories hereunto annexed and produced to you; and that you will not publish or make known to any person, whosoever, except the clerk or clerks, who may by you be employed, and sworn to secrecy in the execution of this commission, the contents of any of the depositions of the witnesses, to be taken by you in this commission named, until publication shall pass by rule or order of said superior court.

Witness, the honorable Robert Raymond Reid, judge of our superior court, for the district of East Florida, this thirteenth day of August, A. D. 1835.

[SEAL.] K. B. GIBBS, *Clerk.*

INSTRUCTIONS.

When the testimony is taken, the commissioner is required to sign his name at the bottom of each sheet of the depositions, and of the whole; and fixing and sealing the several sheets together, then to enclose the whole examination commission, and all, in an envelope, sealed up, with your name written on the outside across the seal, and to endorse the packet on the corner thereof with the names of the parties, and to direct the same to Kingsley B. Gibbs, clerk of said court at St. Augustine, and deliver it to him.

INTERROGATORIES TO ALVAREZ.

SUPERIOR COURT—*District of E. Florida.*

THE UNITED STATES,
ads.
ZEPHANIAH KINGSLEY.
} Claim (mill grant) for 16,000 acres of land

Interrogatories to be administered, on behalf of the United States, to Antonio Alvarez, Esquire, keeper of the public archives in St. Augustine, a witness to be produced, sworn, and examined, in the above entitled cause.

First. Please to state your age, how long you have resided in East Florida; what offices you held therein if any, under the Spanish Government? And how long have you held the office of keeper of the public archives in St. Augustine?

Second. What is the date of the first concession belonging to that class, commonly called mill grants, now on file in your office?

Please state, and annex a copy thereof to your deposition, to be taken on these interregatories.

Third. Please to state whether there are any royal titles on file in the archives, under your charge, which were made to any grantee, after a previous concession of the land to such grantee, upon condition of erectiug a saw-mill? If there are, please state to whom they were made, and annex a copy of the concession and royal title in each of said cases to your said deposition.

Fourth. Do you know of a single instance where a concession was made upon condition of building such saw-mill, that was followed up by a royal title? If you do, please state the case, and annex a copy of such concession and royal title.

Fifth. Please to examine your office and see if there is any such royal tite or file in it, and if there is not, please to state that fact.

THOS. DOUGLAS.
United States Attorney.

Objection.—This case having been closed and submitted to the court for its decission thereon, the claimant's counsel object to any further evidence or testimony in the case; and therefore object to the deposition of the witness named, in the foregoing direct interrogatories, being taken or read. And they further object to all the foregoing interrogatories, as being illegal.

DRYSDALE & PUTNAM,
Attorneys for Claimant.

ANSWERS OF ALVAREZ.

SUPERIOR COURT—*District of East Florida.*

THE UNITED STATES
ads.
ZEPHANIAH KINGSLEY.
} Claim (mill grant) for 16,000 acres of land.

The answers of Antonio Alvarez, Esquire, keeper of the public archives, in St. Augustine, a witness sworn and examined in behalf of the United States, in the above entitled cause, before the commissioner appoinied in the annexed commission.

To the first interrogatory, witness answers, my age is forty-four years. I have always been a resident of East Florida. I have been a clerk in the Governmen Secretary's office, from the year eighteen hundred and seven, to the year eighteen hundred and twenty-one, with two intermissions of about a year each. I was appointed keeper of the puplic archives in the year eighteen hundred and twenty-nine.

To the second interrogatory, witness answers: The first concession for a mill grant, as far as I have been able to ascertain, on the twenty-ninth of January, seventeen hundred and ninety-three, made to William Pengree, a copy of which is hereto annexed.

To the 3rd interrogatory, witness answers: There are none.
To the fourth interrogatory, witness answers: No.
To the fifth interrogotory, witness answers: There is none.

ANTONIO VLVAREZ.

TERRITORY OF FLORIDA—*County of St. Johns, ss.*

I do certify, that having been appointed commissioner on the part of the United States, by the annexed commission, and having been first sworn, I did proceed to examine on oath the witness, Antonio Alvarez, Esquire, named in the said commission to the interrogatories herewith annexed, and his answers thereto are herein correctly and truly set forth.

JOHN C. CLELAND.'
Commissioner.

DOCUMENT ANNEXED TO ANSWERS OF ALVAREZ.

Translation of document annexed to said depositions certified by the keeper of the public archives of East Florida.

His Excellency the Governor:

Don Guilleimo Pengree, an old inhabitant of this province, with due respect to your excellency, says—that back of the lands of his property, about five miles, and at the head of Nepomuecno creek, and also of Doctor's lake, there is a creek proper for the construction of a water-saw mill; and your petitioner confiding in the goodness of your excellency, has ordered all the iron work made which is necessary for this, and also to finish another which he half finished upon his own hands, for all of which he has expended considera-moneys. Therefore, he supplicates your excellency will be pleased to grant him the lands at said place, which are vacant, and that the number be one or two thousand, or according as your excellency should think convenient (besides those corresponding to the number of his family, which have increased three in number since the commissioner received his oath) in order that they may be able to work said mills without being ever deficient of pine lands, or that some other inhabitant should come and locate himself in the vicinity thereof; it would be convenient that your excellency should determine the limits; otherwise the petitioner would be exposed to have his work mutilated and also injured by his expense if he should have to go a great distance to get his timber; and it is a favor which he hopes to receive from the notorious justice with which your excellency dispenses your correct decisions. St. Augustine, Florida, 24th of January, 1793.

WM. PENGREE.

St. Augustine, 26th of January, 1793. The captain, Don Pedro Manott, commissioned for the general distribution of lands, will report upon each one of the points of this petition, in accordance with the instructions and orders in his possession and edicts published by this Government, which may to him seem fit.

QUESADA.

Senor Governor. In reply to your excellency's superior decree, I say, that the lands which this old inhabitant solicits on the back of those of his property 5 or 6 miles, are actually vacant, and also are calculated for the construction of a water saw-mill: But I am ignorant of his having expended any money for his works; I only know that he has commenced one on his own land; as to what relates to the solicitation, which he also makes of this Government, to grant him one or two thousand acres of land, besides those which correspond to him for his family, in order that he may never be deficient of timber for his mills, I have no instructions whatever by which to be regulated; only the edict of good government says that the king grants one thousand acres, besides those which corresponds to the inhabitants, who can cultivate more than that which he owns. But said edict does not embrace the petitioner in any manner whatever, as he has not solicited it for agriculture, but for cutting timber. Wherefore, and considering that if the number of acres were not granted to him which your excellency may think proper to grant, besides those which correspond to him, he will be much injured. Your hxcellency will resolve what you may judge most in accordance to your notorious and strict administration of justice. In relation to said edict, and other instructions which I have from this Government, I do not consider the petitioner entitled to the 150 acres which he now solicits, for the three negroes, by which he says his family has been increased; for said documents make no mention of but the number of persons which each family should have at the time of making the oath and measurement of their lands. It is all that I can inform your excellency on the subject. St. Augustine, 28th of January, 1793. PEDRO MANOT.

St. Augustine, 29th January, 1793. Notwithstanding the one thousand acres offered in the edict of this Government, in addition to the head of families who should cultivate more than that which correspond to them, are not for the purposes proposed by this party; taking into consideration the laudable end, which he solicits them for, and the general and private utility which will result to this province in the exportation of lumber by the establishment of water saw-mills, for that purpose, there are granted to him the one thousand acres, at the place where he solicits them, and where he has projected establishing the new fabric; but not the 150 for the three negroes, with which he has increased his family; as the rule is, that the measurement shall be considered at the time when the oath is taken by the inhabitant without calculating with the increase or diminution happening afterwards. Under these considerations, Don Pedro Manot will proceed to the measurement of the lands corresponding to this party, with the addition of that now granted to him; all without injury to third persons, and in accordance with the instructions and orders given him. QUESADA.

I certify the foregoing to be a true and correct translation of Spanish document annexed.

JOS. S. SANCHEZ.
In. & Tran. Sup. Court, E. D. F.

And afterwards, before the superior court for East Florida, holden at the court house, in the city of St. Augustine, at the term of July, in the year of our Lord one thousand eight hundred and thirty-seven, to wit, on Monday the thirty-first day of said month, and the fifth day of said term, the following decree of confirmation was entered of record in this cause, to wit:

DECREE OF CONFIRMATION.

ZEPHANIAH KINGSLEY,
vs.
THE UNITED STATES OF AMERICA. } Land Claim. 16,000 acres.

Whereas, Zephania Kingsley did, in pursuance of the act of Congress of the United States, entitled "An act supplementary to the several acts providing for the settlement and conformation of private land claims in Florida," and approved 23d day of May 1828, on the 21st day of April 1820, file his petition for the confirmation of cercertain land therein mentioned, in the clerk's office of the superior court for the eastern district of Florida; and afterwards, on the 6th day of July 1833, and on the 21st day of July 1835, file his amendments to the said petition. And *whereas*, the attorney of the United States, for said district, did duly appear and file his answer, and amended answer to the said petition, and afterwards file his answers to the amendments to the said petition; and this cause having been heard, and evidence and argument of counsel, as well on the part of the said claimant, as on that of the United States, having been offered and submitted to the court, and the court having examined the claim of the said petitioner, and the answers of the attorney of the United States, together with the exhibits and evidence filed in this cause, and having maturely considered the same, doth *order adjudge* and *decree*, that this claim is *valid;* and that in accordance with the laws and customs of Spain, and under and by virtue of the late "Treaty of amity, settlement and limits between the United States of America and the King of Spain," ratified by the President of the United States, on the 22d February 1821, and under and by virtue of the laws of nations and of the United States. It is hereby *confirmed, adjudged* and *decreed* unto the said claimant, to the extent, for the number of acres, and at the place as in the memorial of the said claimant, and the decree of the Governor thereon, is set forth, to wit, "five miles square of land or the equivalent thereof, on that creek, of the river St. Johns, called McGirt's, bounded southeast and south, by lands granted to Ferguson and Doctor's lake, southwest and west by vacant lands, north by Don Juan McIntosh's land, and east by lands of said Kingsley and the river St. Johns."

And afterwards, at the same term of July, in the year of our Lord one thousand eight hundred and thirty-seven, to wit, on Monday the eleventh day of said term, and the eleventh day of September, the following appeal was entered of record in this cause, to wit:

APPEAL.

THE UNITED STATES OF AMERICA,
ads.
ZEPHANIAH KINGSLEY.
} Land Claim. 16,000 acres.

This day came as well the attorney of the United States for this district as the solicitor for the said claimant, and the said attorney of the United States moved the court that an appeal be granted in this case on behalf of the said United States, from the decree of this court to the Supreme Court of the United States: and that a citation, with notice of said appeal, may be forthwith issued by the clerk of this court to the appellee, and that the same may be served by the marshal of said district upon the said appellee, or his solicitor or agent, and returned to this court within thirty days from the issuing thereof, all of which is ordered accordingly.

In pursuance of the above order a citation of appeal was duly issued and returned in this case; which said citation, and the return of the marshal thereon, are in the words and figures following, to wit:

CITATION OF APPEAL AND RETURN.

In the name and by the authority of the United States of America.

To Zephaniah Kingsley, or to his agent, attorney or solicitor, greeting:

You are hereby cited and admonished that an appeal has been taken, on the part of the United States, from the decree of the superior court for East Florida to the Supreme Court of the United States, in a certain claim to sixteen thousand acres of land, wherein you, the said Zephaniah Kingsley, are the claimant, and the said United States respondent; and that the record in said cause will be forwarded to the said Supreme Court, to be placed on the docket of said court, at the next term thereof, to be holden on the second Monday of January next.

[SEAL.] Witness, the honorable Robert Raymond Reid, judge of our said court, at the court house, in the city of St. Augustine, this 12th day of September, A. D. 1837.

K. B. GIBBS, *Clerk.*

THOS. DOUGLAS,
District Attorney.

J. DRYSDALE,
B. A. PUTNAM,
} *Solicitors for claimants.*

"Executed by delivering a copy of this process to John Drysdale, September 13th, 1837."

"JOHN M. FONTANE,
Deputy Marshal."

SUPERIOR COURT—*District of East Florida, to wit:*

I, Kingsley B. Gibbs, clerk of our said court, for the district aforesaid, do hereby certify, that the foregoing ninety-nine pages contain a full, true, and complete transcript of the record and proceedings had in the case therein named, in my charge; and that the three surveys and certificates thereto attached, and made a part of this record, are faithfully taken and copied from the said documents, as offered in in evidence in said cause, on file in my office.

In witness whereof, I have hereto set my hand, at the city of St. Augustine, this fourth day of October, one thousand eight hundred and thirty-seven.

K. B. GIBBS, *Clerk.*

By the honorable Robert Raymond Reid, judge of the superior court for the district of East Florida.

To all to whom these presents shall come, be seen, or made known, greeting:

Know ye, that Kingsley B. Gibbs, who hath signed the foregoing attestation, is clerk of the superior court for the district of East Florida; that all due faith and credit are and ought to be given to his acts as such, and that the foregoing attestation is in due form of law.

In testimony whereof, I have hereunto set my hand, and caused the seal of the said court, to be hereunto affixed, this fourth day of October, A. D. 1837, and of the independence of the United States of America the sixty-second year.

[SEAL.] ROBT. RAYMOND REID.